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*Defendant in proper person*

**FILED**

FEB 27 2014 *U*

THOMAS G. BRUTON  
 CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS**

SLEP-TONE ENTERTAINMENT  
 CORPORATION, et al.,  
 Plaintiff(s)

vs.

DIANE KLEMZ, et al.,  
 Defendants.

CASE NO.: 14-cv-189

**MOTION TO DISMISS**

COMES NOW, Defendant Joe Gaytan, in proper person, and herein moves to dismiss Plaintiff's Complaint on file herein. This motion is made pursuant to Federal Rule of Civil Procedure 12(b), the Points and Authorities attached hereto, the pleadings and papers on file herein and any oral argument as may be given at time of hearing.

Dated this 25<sup>th</sup> day of February, 2014.

By

*Joe Gaytan*  
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## POINTS AND AUTHORITIES

### Statement of facts

Plaintiff, Slep-Tone Entertainment Corporation ("Slep-Tone") (referred to as "Slep-Tone") has in multiple federal district court venues across the country sued hundreds of karaoke hosts ("karaoke jockeys" or "KJs") and karaoke venues seeking damages for the alleged unauthorized display of the Sound Choice logo(s), or of marks belonging to other manufacturers,' which Slep-Tone claims constitutes trademark infringement. Of approximately fifty lawsuits, only one, *In Re Slep-Tone Entertainment Corp. consolidated cases*, Case No. 5:11-cv-32/RS-CJK, filed in the Northern District of Florida, Panama City Division, has gone to trial. There, Slep-Tone finally tried a case against three defendants and received a judgment against two of the defendants totaling only \$9,585.00. No attorney's fees were awarded. See Exhibit 1, Judgment in the case of *In Re Slep-Tone Entertainment Corp. consolidated cases*, Case No. 5:11-cv-32/RS-CJK, filed July 17, 2012 in the Northern District of Florida, Panama City Division.

Instead of litigating cases, Slep-Tone has attempted to force numerous defendants into settling with threats of million dollar judgments and the seizure of the KJs equipment. Slep-Tone then generally fails to pursue discovery. See, i.e., Exhibit 2 and 3, Proposed Discovery Plan and Scheduling Order filed by the Hot Shots Defendants and the PTs Defendants in the case of *Slep-Tone Entertainment Corporation v. Ellis Island Casino & Brewery, et al.*, Case No. 2:12-cv-00239-KJD-RJJ, filed in the District of Nevada, Southern Division ("Las Vegas case"). Slep-Tone's trolling for settlements strategy consists of suing multiple, unrelated defendants in regional lawsuits because such joinder of unrelated defendants who are generally in competition with one another increases each

defendant's litigation costs making settlement for less than the defendant's estimated attorney's fees more attractive.

Slep-Tone has not sued for copyright infringement. Instead, Slep-Tone has sued for the display of its Sound Choice [and for marks belonging to other manufacturers'] trademark logo[s] during the playing of a karaoke track from a computer copy. However, the vast majority of Sound Choice discs do not have a "TM" or "®" symbol following the Sound Choice logo on the face of the disc. None of the Sound Choice discs this defendant has ever seen used has the TM or ® mark next to the Sound Choice logo when the disc is actually played and the Sound Choice logo is displayed on a television screen. See Exhibit 4, Affidavit of Joe Gaytan in Support of Motion to Dismiss, para. 2.

Sound Choice discs do contain a warning of a different nature which, if followed to the letter, would not allow for any karaoke performance at any public venue. Such "karaoke shows" are now, and have always been, Slep-Tone's and all other karaoke disc manufactures' bread and butter as the shows introduce people to karaoke, and most karaoke discs are sold to KJs specifically for that purpose. The warning states,

WARNING: THIS MATERIAL IS PROTECTED BY FEDERAL COPYRIGHT LAWS, UNAUTHORIZED DUPLICATION, PUBLIC PERFORMANCE, OR BROADCAST IS A VIOLATION OF APPLICABLE LAWS. THESE ARE PROFESSIONAL RE-CREATIONS AND NOT RENDITIONS BY THE ORIGINAL ARTIST. See Exhibit 4, para. 3.

This Court should note that this warning makes no mention of copying or displaying the Sound Choice trademark logo and makes no mention of the word "trademark" which is the basis of the present lawsuit. This warning is simply designed to protect the song and music from copyright infringement, and nearly all karaoke venues, which also play background or jukebox music, generally satisfy their obligations to the original artists by

paying monthly fees to ASCAP (American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Inc.) and SESAC, Inc.

Thus, the warning on the face of some Sound Choice discs bears no relationship to the present case, and Slep-Tone has without warning, and without clearly identifying the Sound Choice logo as a trademark, sued the defendants in the present case. Nowhere in the Complaint is there any mention of the specific Sound Choice discs which were allegedly observed being played at each individual defendant's karaoke show making it is impossible to determine whether the tracks being played from a computer had specified on the face of the disc from which the track was taken the Sound Choice logo with the appropriate trademark designation.

### **Standard of review**

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," and "only a complaint that states a plausible claim for relief survives a motions to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009). To survive a motion to dismiss a complaint must include "enough facts to state a claim to relief that is plausible on its face," and this "requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." *Ashcroft*, 129 S.Ct. at 1960, *quoting*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Factual allegations "must be enough to raise a right to relief above the speculative level," and provide more than, "a suspicion [of] a legally cognizable right of action," and, "[w]here a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1175-76 (9th Cir. 2010).

To withstand a motion to dismiss, the complaint must set forth sufficient facts to establish all necessary elements of a claim for relief so that the adverse party has adequate notice of the nature of the claim and the relief sought. *Johnson v. Riverside Healthcare*, 534 F.3d 1116, 1123 (9th Cir. 2002); Fed. R. Civ. P. 8(a). The Court is not required to accept as true allegations that are merely conclusory. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action's elements that is conclusory does not state a claim to relief plausible on its face. *Clemens v. Daimler Chrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008).

**Slep-Tone's allegations are too generalized and conclusory to survive a motion to dismiss.**

Slep-Tone's Complaint is filled with generalized, conclusory allegations which are not directed to any specific defendant. Most of the allegations are made against all the defendants in mass. In that regard, Slep-Tone's allegations are formulaic recitations of the elements of its claims and fail to allege specific claims against specific defendants plausible on their face. Slep-Tone's allegations are generally speculative and have been made in a vain attempt to be consistent with the defendants being liable under the alleged causes of action, but Slep-Tone's allegations only state Slep-Tone's suspicion that it has legally cognizable causes of action. Slep-Tone's Complaint fails to establish all necessary elements of its claims for relief and fails to provide defendants adequate notice of the nature of its claims because Slep-Tone's claims are all based of the defendant's failure to adhere to Slep-Tone's fabricated conditions of tolerance which have no legal basis, and Slep-Tone then simply concludes that defendants must then be liable for acts of counterfeiting as if defendants are duplicating Sound Choice karaoke discs and offering those discs for sale

although none of the defendants are so accused. No consumers are alleged to have been fooled into believing that a disc they purchased was an original, genuine Sound Choice disc.

The defendants are not alleged to have sold any discs, counterfeit or otherwise. The defendants are not alleged to have tried to convince any patron of any karaoke venue that karaoke song tracks played from the defendants' computers have been copied to the defendants' computers with any input, sanction or involvement of Slep-Tone or Sound Choice [or any other manufacturer]. In fact, as will be demonstrated herein, Slep-Tone cannot input, sanction or involve itself in any way in the copying of its karaoke discs to a computer because Slep-Tone has no authority to authorize or sanction any media or format shifting of its product.

Slep-Tone's Complaint must be dismissed as it relates to trademark infringement because the defendants have no obligation to inform Slep-Tone or receive permission from Slep-Tone to make a media and format shift.

Slep-Tone's Complaint makes reference to certain conditions which Slep-Tone has called from time to time "conditions of tolerance" in defining what constitutes a pirated karaoke accompaniment track which allegedly displays a counterfeit Sound Choice trademark. *See, i.e.,* Exhibit 5, Complaint in the Las Vegas case, ¶¶ 71-73. Reference to this arbitrary standard under which Slep-Tone tolerates but does not approve of a computer copy being made from one of its karaoke accompaniment discs confuses the theory upon which Slep-Tone claims entitlement to relief. *See* Complaint, ¶¶ 26-31.

Slep-Tone claims it never authorizes media-shifting or format-shifting of its karaoke accompaniment tracks for any commercial purpose. Slep-Tone also claims it does not authorize media-shifting or format-shifting *outside its conditions of tolerance*. Thus, while it would appear Slep-Tone authorizes media-shifting and format-shifting copying of its product so long as its conditions of tolerance are met, Slep-Tone cannot actually give any such authority. Because of its contracts with the holders of the copyrighted materials, Slep-Tone cannot and will not approve, authorize or license any media or format shifting of its karaoke disc product. Slep-Tone only tolerates such copying by agreeing not to sue so long as its conditions of tolerance are met.

See Exhibit 4, para. 4, 5.

Clearly not all of Slep-Tone's conditions of tolerance are enforceable. Slep-Tone is not damaged so long as the KJ has 1:1 correspondence meaning that a Sound Choice disk was purchased to back up each copy on the KJ's computer. With proper labeling and warning, and assuming Slep-Tone does not itself have unclean hands, such a condition of tolerance may be tenable. However, Slep-Tone is not damaged if the KJ fails to notify Slep-Tone every time the KJ copies a Sound Choice disc. That conditions of tolerance are excessive because Slep-Tone is not damaged by any failure to comply with the registration or notification condition and because compliance with Slep-Tone's conditions of tolerance enable Slep-Tone to financially benefit by being able to keep track of the KJ for marketing purposes. See Exhibit 4, para. 4. The Panama City Court made no mention of the defendant failing to notify Slep-Tone of a media and format shift or of the defendant failing to register with Slep-Tone but, instead, the Panama City court, which did not consider all

the arguments made in this motion, confined its ruling to whether a 1:1 correspondence was maintained.

**Slep-Tone's Complaint must be dismissed because Slep-Tone has come to a court of equity with unclean hands.**

One who comes into equity must come with clean hands. In the present case, Slep-Tone seeks the assistance of this Court to further an illegal relationship and, therefore, is not entitled to relief. *See Loughran v. Loughran*, 292 U.S. 215, 229-30 (1934).

Slep-Tone set up a "safe harbor" website whereby Slep-Tone encourages KJs to make computer copies of its product for ease of putting on a karaoke show so long as the KJ allows Slep-Tone to audit their computer to guarantee a 1:1 correspondence between any song track on the KJ's computer and the song tracks contained in the KJ's Sound Choice karaoke disc library. The KJ must also register with Slep-Tone which allows Slep-Tone to more easily market further product to the KJ. *See Exhibit 4, para. 4.*

Kurt Slep, CEO of Sound Choice, admitted,

We do not have the rights from the Music Publishers (who represent the song writers) to grant the transfer of our music from the CDG to a hard drive, that is why we have not licensed "hard drives" per se. *See Exhibit 4, para. 5.*

Slep-Tone cannot authorize a computer copy being made of its karaoke disc product but encourages KJ's to make such computer copies by setting up its safe harbor whereby a KJ may receive from Slep-Tone a covenant not to sue in return for the KJ abiding by Slep-Tone's conditions of tolerance when making a computer copy of a Sound Choice disc. Since Slep-Tone's Complaint seeks the seizure of defendants' karaoke equipment, Slep-Tone is coming to a court of equity with unclean hands and is not entitled to the equitable relief it



and (3) that defendant's use of the mark is likely to cause confusion, to cause mistake or to deceive." *Toho Co., Ltd. v. William Morrow and Company, Inc.*, 33 F.Supp.2d 1206, 1210 (C.D. Cal 1998), *citing*, 15 USC § 1114(a); *E & J Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1288, FN 2 (9th Cir. 1992).

Slep-Tone's Complaint is confusing in its cause of action. In essence, it alleges that the defendants made computer copies of Sound Choice discs to assist them in producing karaoke shows. The projection on the television screen and the music played in the background remained the same except instead of the KJ needing to keep track of a thousand discs, loading and unloading them into a karaoke disc player, the KJ merely needed to search for the correct song track in the KJ's computer and click on the appropriate song. In that regard, nothing has changed in what is projected or heard.

What Slep-Tone alleges through pure speculation is that the KJ would not be able to produce a karaoke show the old fashion way because Slep-Tone speculates that the KJ does not have, or does not still have, all the discs to put on the same karaoke show by using all the original discs and tediously feeding them one after another into a karaoke disc player. However, Slep-Tone has failed to allege any defendant has made a false designation of origin or a false or misleading representation of fact.

**There is no likelihood of confusion because Slep-Tone sells to purchasers of Sound Choice karaoke discs and not to patrons of a karaoke bar waiting for their opportunity to sing who do not purchase any karaoke disc from the KJ.**

If the court determines as a matter of law from the pleadings that confusion is unlikely, then the complaint should be dismissed. *Murray v. Cable Nat'l Broadcasting Co.*, 86 F.3d 858, 860 (9th Cir. 1996), *citing*, *Toho Co. Ltd. v. Sears Roebuck & Co*, 645 F.2d 788,

790-791 (9th Cir. 1981). A likelihood of confusion exists when a consumer viewing a service mark is likely to purchase the services under a mistaken belief that the services are, or are associated with, the services of another provider. *Murray*, 86 F.3d at 860-61 (9th Cir. 1981).

Trademark law is concerned with the protection of symbols used to identify a product in the marketplace and to prevent confusion as to its source. *RDF Media Ltd. v. Fox Broad. Co.*, 372 F.Supp.2d 1, 13 (C.D. Cal. 2004). Trademark claims are subject to a commercial use requirement "to secure the owner of the mark the goodwill of his business and to protect the ability of consumers to distinguish among competing producers." *Bosley Med Inst., Inc. v. Kremer*, 403 F.3d 672, 676 (9th Cir. 2005), quoting, *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 774, 112 S.Ct. 2753, 120 L.Ed.2d 615 (1992).

The United States Trademark Trial and Appeal Board held in *In re The W W Henry Company, L.P.*, 82 U.S.P.Q.2d 1213 (T.T.A.B. 2007), that Confusion between the two products carrying nearly the same mark ("PATCH 'N GO" vs. "PATCH & GO", one a chemical filler sold to plastic manufactures and one a drywall patch sold to do-it-yourselfers, respectively) was unlikely because the two products would be sold "to different classes of purchasers through different channels of trade. Similarly, the Federal Circuit in *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713 (Fed. Cir. 1992), held that confusion because two products carrying nearly the same mark ("E.D.S." v. "EDS", one selling data processing services to medical insurers and one selling batteries and power supplies to makers of medical equipment, respectively) was unlikely even though both parties sold products to the medical industry.

In the present case, Slep-Tone has alleged ownership of a valid trademark, but Slep-Tone must also allege likelihood of confusion from the defendant's use of the mark. Slep-

Tone must also allege commercial use of its mark, that its business's goodwill is being diminished by the use of its mark and that the relief sought will protect the ability of consumers to distinguish Sound Choice from among competing producers.

Confusion in the present case is unlikely as a matter of law because viewers and participants in karaoke shows are not Slep-Tone customers; Slep-Tone sells Sound Choice karaoke discs to KJs and enthusiasts. Neither the KJ nor the venue sale karaoke discs, and the KJ and venue merely provide a service of putting on karaoke shows. Neither the KJ nor the venue compete with Slep-Tone in the production and marketing of karaoke accompaniment compact discs. The relief requested does not protect the ability of consumers to distinguish Slep-Tone's product from the KJ's or venue's services.

Slep-Tone is not in the business of providing services, so a customer is not likely to be confused about whether Sound Choice is associated with putting on the karaoke show. The consumer is not likely to mispend their money because of any confusion causing them to patronize the venue and spend money at the bar.

Based on the allegations made in the Complaint, confusion is unlikely as a matter of law requiring the dismissal for failure to state a claim.

**Slep-Tone has no claim for a non-trademark use of the Sound Choice mark.**

Infringement laws do not apply to a non-trademark use of a mark. *New Kids on the Block v. New Am. Publ'g, Inc.*, 971 F.2d 302, 307 (9th Cir. 1992). Direct trademark infringement attaches to "those who actually manufacture or sell infringing materials." *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996).

The KJ and venue are not selling CDs with the Sound Choice trademark on them. Unauthorized disc copies stamped with the Sound Choice trademark would be true

counterfeits of the Sound Choice product. Sound Choice has no case because its mark applies to the marketing of CDs, not to the provision of services.

Neither the KJs nor the venues are alleged to have actually manufactured or sold infringing product materials.

**Slep-Tone has no cause of action for counterfeiting.**

15 U.S.C. § 116(d)(1)(B)(I) defines a “counterfeit mark” as a “counterfeit of a mark that is registered on the principal register...for such goods or services sold, offered for sale, or distributed”.

18 U.S.C. § 2320(e)(1)(A)(iii) defines a “counterfeit mark” as a “spurious mark...that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office.”

The legislative history found in 130 Cong. Rec. H. 12078-79, (joint statement on 1984 trademark counterfeiting legislation) and reprinted in Vol. 8, at p. 34-619, states, “[B]ecause this act is intended to reach only the most egregious forms of trademark infringement, it does not affect cases in which the defendant uses a registered mark in connection with goods or services for which the mark is not registered.” *See also, Gilson on Trademarks*, § 5.19.

To meet the definition of a “counterfeit mark,” “[15 U.S.C.] Section 1116(d) requires that the mark in question be (1) a non-genuine mark identical to the registered, genuine mark of another, where (2) the genuine mark was registered for use on the same goods to which the infringer applied the mark.” *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 945-46 (9th Cir. 2011). In order to sustain a counterfeiting claim a plaintiff must allege and prove that the defendant is using the allegedly counterfeit mark in

connection with the exact good and services set forth in its registration. *Louis Vuitton*, 658 F.3d at 945-46.

At best, the Sound Choice mark was merely displayed as part of the karaoke show service. The Sound Choice mark are not alleged as having been displayed on the same goods or in the same context as the product sold by Slep-Tone. Defendants are not alleged to have counterfeited anything sold to the public whereby the public was fooled into believing that the goods being sold were manufactured by Sound Choice as, for example, would be the case of a counterfeit Rolex watch sold in Hong Kong for \$40.00 where the buyer might actually believe he got a great deal on a genuine Rolex. The goods and services used during a karaoke show are different from the goods Slep-Tone sales or as genuine Sound Choice discs. Slep-Tone has no cause of action for counterfeiting.

**Any display of the Sound Choice mark was a nominative fair use and is non-actionable.**

The issue of nominative fair use may be considered on a motion to dismiss. In *re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 11 F.3d 1460, 1466-67 (9th Cir. 1993). Three factors determine whether a nominative fair use has occurred; they are (1) whether the product was "readily identifiable" without use of the mark, (2) whether the defendant used more of the mark than necessary and, (3) whether the defendant falsely suggested he was sponsored or endorsed by the trademark holder. *Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1175-76 (9th Cir. 2010), *citing*, *Playboy Enterprises, Inc. v. Welles*, 279 F.3d 796, 801 (9th Cir. 2002).

A defendant is not liable under the Lanham Act for a nominative fair use which includes use of the plaintiff's mark to describe or identify the plaintiff's product where the

defendant's ultimate goal is to describe or identify his own product and that it is not necessary for the defendant to affirmatively announce that its product or service is not sponsored by the plaintiff to find that the defendant did not falsely suggest that he was sponsored or endorsed by the trademark holder and that, "A defendant's use is nominative where he or she used plaintiff's [mark] to describe or identify the plaintiff's product, even if the defendant's ultimate goal is to describe or identify his or her own product," and "[w]here use of the trade dress or mark is grounded in the defendant's desire to refer to the plaintiff's product as a point of reference for defendant's own work, a use is nominative." *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 809-11 (9th Cir. 2003).

"[A] defendant who raises the nominative fair use issue need only show that it uses the mark to refer to the plaintiff's trademarked goods or services. The burden then reverts to the plaintiff to show a likelihood of confusion under the nominative fair use analysis." J. Thomas McCarty wrote in 3 J. Thomas McCarthy, *McCarthy On Trademarks And Unfair Competition* § 23.11 (4th ed. 2006 & Supp. 2012).

This Court has the power to determine from its examination of the pleadings whether there has been a nominative fair use as a matter of law and, if so, dismiss Slep-Tone's Complaint.

Slep-Tone is in the business of marketing CDs, a physical product, not putting on karaoke shows, a service not covered by its trademark registration. When a copy of a Sound Choice karaoke disc track is played at a karaoke show, the Sound Choice mark is not displayed to identify the defendant's karaoke services but to identify the origin of the track. Sound Choice is correctly identified as the origin of the track when the Sound Choice trademark is displayed. Neither the KJ nor the venue are alleged to have falsely suggested

they were sponsored or endorsed by Sound Choice. The defendants are not alleged to have displayed the Sound Choice mark more than necessary. Any display of the Sound Choice mark is purely incidental to the playing of the computer copy and merely identifies Sound Choice as the creator of the karaoke disc from which the copy was made.

The KJ's ultimate goal is to identify himself as the one who puts on a show which brings people into the venue. Slep-Tone has not alleged the KJ is using the Sound Choice mark to identify his or her services. The Sound Choice mark is only used to identify the origin of the track. There can be no likelihood of confusion in this regard as neither the KJ nor the venue are alleged to have identified themselves as the creator of the product. Slep-Tone has not alleged the KJ or the venue have falsely suggested they were sponsored or endorsed by Sound Choice or Slep-Tone.

Neither the KJ nor the venue had any affirmative duty to announce Slep-Tone or Sound Choice did not sponsor and did not endorse their karaoke show. At best, the defendants' reference to Sound Choice's karaoke discs was as a point of reference for the purpose of giving the karaoke singer a choice of song and arrangement. Any display of the Sound Choice mark is a nominative fair use as a matter of law and, therefore, neither the KJ nor the venue are liable for displaying the Sound Choice mark.

**There is no claim for unfair competition since the standard is the same as for trademark infringement.**

"When trademark and unfair competition claims are based on the same [alleged] infringing conduct, court apply the same analysis to both claims." *Taho Co., Ltd. v. William Morrow and Company, Inc.*, 33 F.Supp.2d 1206, 1210 (C.D. Cal. 1998), *citing*, *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, FN 2 (9th Cir. 1992). "The Ninth Circuit has held that the tests for Federal Trademark Infringement under Title 15 U.S.C. § 1114, False

Designation of Origin under Title 15 U.S.C. § 1125 and unfair competition involving trademarks, are the same.” *Visa Intern. Service Ass’n v. Visa Hotel Group, Inc.*, 561 F.Supp. 984, 989 (D. Nev. 1983).

If Slep-Tone has no trademark infringement claim, then it has no unfair competition claim.

### CONCLUSION

In conclusion, Slep-Tone’s Complaint should be dismissed in its entirety.

Dated this 25th day of February, 2014.

By

  
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*Defendant in proper person*



### CERTIFICATE OF MAILING

I hereby certify that on the 26<sup>th</sup> day of February, 2014, I mailed a true and correct copy of the foregoing MOTION TO DISMISS via first class mail, postage prepaid, and in a sealed envelope, by depositing same in a receptacle marked for mailing with the United States Postal Service and addressed to the following:

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**EXHIBIT 1**

Judgment in the case of *In Re Slep-Tone Entertainment Corp.*  
*consolidated cases*, Case No. 5:11-cv-32/RS-CJK, filed July 17, 2012 in the  
Northern District of Florida, Panama City Division.

**EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

**In Re SLEP-TONE ENTERTAINMENT CORP.  
consolidated cases,**

**CASE NO. 5:11-cv-32/RS-CJK**

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**JUDGMENT**

**Procedural History**

If the number of defendants in this action is any indication, karaoke is popular in the various watering holes of the Northern District and throughout Florida. Plaintiff brought five trademark infringement cases against dozens of defendants representing a who's who of Florida's nightlife. The names read like Facebook updates from spring break: Tequila Mexico, Mugs N Jugs, Malibu Lounge. Those cases were consolidated into this action. (Doc. 66). I transferred numerous defendants to the appropriate judicial district. (*e.g.* Doc. 71).

After months of settlement conferences, many of the defendants chose the door rather than face the music. Now that it's "last call," only three defendants remain: Donovan's Reef Lounge & Package Store, Inc. ("Donovan's"), Green Glass Mall Inc. ("Green Glass"), and Robert L. Paynter, Sr. A nonjury trial was conducted before the Court July 2 and 3, 2012, on Plaintiff's three count complaint for trademark infringement, unfair competition, and Florida deceptive and unfair trade practices. The parties were

allowed to submit proposed findings of fact and conclusions of law. (*See* Docs. 197, 198, 199, & 200). I have considered these proposals.

### **Findings of Fact**

Plaintiff is a business involved in the distribution of prerecorded karaoke music products on compact discs. Tr. 15. Plaintiff holds a valid registered trademark of the term "Sound Choice." (Pl. Ex. 1 & 3). The Sound Choice trademark had been renewed several times and is current. (Pl. Ex. 2 & 4). The Sound Choice mark appears on all of Plaintiff's products including the discs themselves, the accompanying disc inserts, and the video portion of the product that the end-user views. Tr. 19.

Plaintiff produces two types of products, Compact Discs plus graphics ("CD+G") and MP3 plus graphics ("MP3+G"), which contain the karaoke songs. Tr. 20-21. Each song has a current retail value of seventy-five cents. In the past, each song had a retail value of \$1.50, but Plaintiff lowered the price to compete with pirated copies. Tr. 60. Plaintiff sells its product only on disc and does not sell their product on computer hard drives. Tr. 20-21. However, many karaoke jockeys ("KJs") and others have transferred the content of their compact discs to hard drive because of the ease by which songs can be played. Tr. 23. This process is called "media shifting." Tr. 23.

In response to what was occurring in the marketplace, Plaintiff created a "media shifting policy." This policy contained several components. First, is the "one-to-one" component which provides that for each song on a hard drive, the possessor must own, have purchased, and still possess the original disc. Tr. 23. Second is the notification

component where the user must notify Plaintiff of their intent to media shift. Finally, the audit component requires that Plaintiff conduct an examination and comparison of the hard drive and the compact discs to ensure the one-to-one ratio. Tr. 24. During the audit process, Plaintiff has the capability to determine whether Sound Choice files have been deleted from the hard drive. Tr. 26. Entities that go through this process and pass the audit are issued a covenant not to sue which explains the policy and defines their rights. Tr. 24-25. Being out of compliance with the one-to-one component voids the entire media shifting policy and covenant not to sue. Tr. at 27-28.

The current media shifting policy has been in place since approximately 2007. Tr. 62-63 & 118. Before 2007, the policy evolved with changes in technology in a somewhat ad hoc fashion. The policy is communicated to users with literature included with each new disc and in various trade magazine advertisements. Tr. 62-63 & 81. Copies of the policy or of the communications of the policy were not submitted into evidence.

Before this policy was implemented in 2007, Plaintiff contends that it did not grant its consent to *any* media shifting. Tr. 236. Mr. Slep testified that the discs themselves contained the "standard" warning that copying, rebroadcasting, or retransmission is not permitted. Tr. 64. Thus, Mr. Slep asserted that by default, no copying was allowed. Tr. 80. No discs were introduced into evidence which bore these warnings, although no one contested that the warnings appeared on the discs.

**A. Corporate Defendants**

Defendants Donovan's and Green Glass<sup>1</sup> (collectively "corporate defendants") are Panama City Beach businesses which have some overlap in ownership. Tr. 144-145. George Davis testified on behalf of both companies as their manager and part owner. *Id.* Each business operates a bar and a separate liquor store. Donovan's also operates a convenience store. *Id.* The corporate defendants put on karaoke shows using their own equipment. Tr. 145.

The equipment mainly consisted of three red hard drives ("the red hard drives") which are identical to each other in terms of karaoke content. Tr. 34, 53-54, 160. The red hard drives were created from an older silver hard drive by transferring the content of the silver drive to each of the three red hard drives. Tr. 160. The silver drive, in turn, was initially created in 2007 when the corporate defendants hired a person to media shift all of their compact disc karaoke holdings onto two silver drives, both of which are no longer functional. Tr. 160. The three red hard drives were used in the following manner: one for Donovan's, one for Green Glass, and one as a backup. Tr. 160.

During discovery in this suit, Plaintiff audited Donovan's red hard drive and compared its content to the corporate defendants' compact disc holdings. Tr. 34.<sup>2</sup> The results of this analysis were admitted into evidence. (Pl. Ex. 5 & 6).<sup>3</sup> The corporate defendants together owned a combined total of 239 Sound Choice *physical* discs. (Pl.

<sup>1</sup> Green Glass operates a bar called "Sweet Dreams." Donovan's operates under its own name. Tr. 128

<sup>2</sup> Plaintiff did not audit all three hard drives because the corporate representative stated that the three red hard drives were identical in terms of content.

<sup>3</sup> Besides Sound Choice music, all Defendants contend that their systems possessed karaoke tracts from other producers besides Plaintiff. Plaintiff was limited to inspecting only those digital folders which contained Sound Choice music. They were not allowed to inspect other folders containing music from different karaoke tract producers. Tr. 36.

Ex. 5). Of the 222 discs appearing on Donovan's hard drive, 80 were missing from Donovan's CD collection. Of the 222 discs appearing on Green Glass' hard drive, 135 were missing from Green Glass' CD collection. For the backup hard drive, 211 of 222 were missing. (Pl. Ex. 6, p. 12); Tr. 41-42. Plaintiff contends that the corporate defendants were, thus, in violation of their media shifting policy's one-to-one component.

The corporate defendants asserted that, at one time, they were in one-to-one compliance for each of the red hard drives. Over the years, many discs were lost, stolen, or made inoperable by the smoke-filled and booze-laden environments in which they were stored. Tr. 160, 171-72.

Mr. Slep visited Green Glass on one occasion and witnessed the Sound Choice mark displayed during several karaoke performances. Tr. 29. No other witnesses testified about viewing the Sound Choice mark at any of the Defendants' locations.<sup>4</sup>

Both Green Glass and Donovan's were profitable enterprises and no doubt they profited to some extent by their karaoke shows. (Pl. Ex. 8, 9, 10, & 11). They did not charge patrons a cover charge or a fee to participate in karaoke. Tr. 128-29.

## **B. Individual Defendant**

Defendant Paynter is a karaoke jockey; he is hired by individuals or business to put on karaoke shows. Tr. 187. Mr. Paynter owns one karaoke system which is on an external hard drive. Tr. 176. He puts on one show per week at a Tallahassee

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<sup>4</sup> Plaintiff had an investigator visit some of the Defendants' location. The investigator is now deceased and his report was not admitted into evidence. Any references to the investigator or his report are not evidence. See Tr. 225.

establishment named Po' Boys and the occasional private engagement. Tr. 187. For his services, Po' Boys pays him \$200 (\$175 plus a \$25 bar tab). Tr. 188.

In response to this civil litigation, Mr. Paynter "eliminated all of the Sound Choice songs from [his shows] and removed them from his hard drive." Tr. 179-80; Pl. Ex. 13; (Ans., Doc. 118, p.2). Specifically, Mr. Paynter deleted those tracks from his hard drive using the "delete key" but did not use any deleting software. Tr. 179-80 & 287. Mr. Paynter did this because he believed that by deleting the Sound Chose songs he would remedy this lawsuit. Tr. 179. Mr. Paynter did not believe that he was purposefully destroying evidence although Mr. Paynter received a letter about evidence preservation from Plaintiff's counsel along with the summons.<sup>5</sup> (Pl. Ex. 14). However, Plaintiff never inspected Mr. Paynter's hard drive to see if it could determine which tracks had been deleted. Tr. 77-78. Additionally, no witnesses testified to seeing the Sound Choice mark displayed by Mr. Paynter.

## **Conclusions of Law**

### **A. Trademark Infringement**

This is not the typical trademark case where the infringer produces a product and markets it under the trademark of another. *E.g., Kentucky Fried Chicken Corp. v. Smith*, 351 F. Supp. 1311 (E.D. Mich. 1972) (Al's Kentucky Fried Chicken infringed on Kentucky Fried Chicken's trademark). This is not even the typical case of pirated media

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<sup>5</sup> There is some dispute about whether Mr. Paynter was properly served at the beginning of trial. Default was entered against Mr. Paynter because he failed to timely respond to the complaint. (Doc. 88). This default was later set aside because Mr. Paynter brought forth some evidence that his aged father accepted service at the wrong address. (Doc. 113).



sold as an original. *Beachbody, LLC v. Johannes*, 2011 U.S. Dist. LEXIS 90721 (C.D. Cal. 2011) (P90X DVDs sold on eBay). Rather, this is a case where the alleged infringer made an identical replica of Plaintiff's product and displayed them to the public as part of their business.

This is a unique area of trademark law. In general, the infringement of digital media is pursued using copyright law. *See In re Aimster Copyright Litig.*, 334 F.3d 643, 645 (7th Cir. 2003) (Posner, J.) (swapping copyrighted music infringes copyright). Here, Plaintiff is not the holder of the karaoke tracks copyright because it is not the singer, songwriter or music publisher. *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 920 (2005). Rather, the only avenue by which Plaintiff can protect its product is through the Sound Choice trademark that is displayed on the discs themselves and on the screen during performances. Because copyright and trademarks are related but distinct property rights, *Polar Bear Prods. v. Timex Corp.*, 384 F.3d 700, 721 (9th Cir. 2004), Plaintiff's trademark claim may properly be pursued in this context. That is, the holder of a trademark may restrict its use by the terms of the holder's consent. *See Stevens v. Gladding*, 58 U.S. 447, 452-453 (1855) (purchaser of a copperplate may not use it to make maps where he has not acquired the separate right to print maps).

The Lanham Act makes liable any person who, without the consent of the trademark registrant, uses "in commerce any . . . copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . . ." 15 U.S.C. § 1114(1)(a).

To prevail on a claim of trademark infringement, plaintiff must establish: (1) that they possess a valid mark, (2) that the defendants used the mark, (3) that the defendants' use of the mark occurred "in commerce," (4) that the defendants used the mark in connection with the . . . distribution . . . of goods or services, and (5) that the defendants used the mark in a manner likely to confuse consumers. *N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1218 (11th Cir. 2008).

Here, everyone agrees that Plaintiff has a valid mark. As to the usage element, the only direct evidence in the record is Mr. Slep's one visit to Green Glass where he viewed the Sound Choice mark being displayed. No other witnesses testified that they viewed the Sound Choice mark at Donovan's or with Mr. Paynter. Circumstantial evidence exists that the corporate defendants possessed copies of the Sound Choice mark and displayed them. Mr. Davis testified that two of the three red hard drives were used either at Green Glass or Donovans. Those hard drives contained Sound Choice music as well as music from other producers. It is likely that some Sound Choice songs were played in the many years since the corporate defendants began hosting karaoke shows. Plaintiff has met its burden as to this element for the corporate defendants.

As to Mr. Paynter, the only evidence Plaintiff has presented that he used their product is the fact that he admits to possessing Sound Choice recordings and to deleting them from his hard drive. Because the hard drive was never inspected, we do not know how many songs were deleted from his hard drive. And, more importantly, we do not know the ratio of songs on hard drive to songs on CD.

Plaintiff asks the Court to use the adverse inference rule because Mr. Paynter admits to deleting Sound Choice tracks after this litigation was begun. The adverse inference rule provides that “when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.” *Callahan v. Schultz*, 783 F.2d 1543, 1545 (11th Cir. 1986) (citation and quotation omitted). An adverse inference is drawn from a party's failure to preserve evidence only when the absence of that evidence is predicated on bad faith. *Bashir v. AMTRAK*, 119 F.3d 929, 931 (11th Cir. 1997).

I find that the adverse inference rule is not applicable to the facts of this case. First, Plaintiff never sought to remedy the situation by seeking production of Mr. Paynter's hard drive so that it could analyze which songs had been deleted. Second, the issues surrounding the service of Mr. Paynter draw into question whether he had received Plaintiff's warnings not to destroy evidence. Finally, it may have been wrong for Mr. Paynter to believe that deleting the offending material would remedy the situation, but Plaintiff has not demonstrated that it was done in bad faith. For these reasons, I find that Plaintiff has not met its burden to establish that Mr. Paynter improperly used the trademark.<sup>6</sup>

Turning to the third prong, Plaintiff has satisfied its burden to establish that the corporate defendants' use was “in commerce.” *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1194 (11th Cir. 2001) (holding that free distribution of software over

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<sup>6</sup> Plaintiff also argues for an adverse inference against the corporate defendants based upon circumstantial evidence that they hid evidence. (Doc. 198, p. 17-18). Plaintiff should have addressed evidentiary concerns with a pretrial motion directed at these specific issues. I find that Plaintiff has not met its burden to show that the adverse inference rule is applicable to the corporate defendants.

the internet is sufficient to meet in commerce prong). “The term ‘use in commerce’ denotes Congress's authority under the Commerce Clause rather than an intent to limit the Lanham Act's application to profit making activity. *Id.* (citation and quotation omitted).

Likewise Plaintiff has satisfied its burden to establish that the corporate defendants used the mark “in connection with the . . . distribution . . . of goods or services.” That is, the Sound Choice mark was displayed during the presentation of a karaoke show, a service provided by Green Glass and Donovans.<sup>7</sup>

Finally, Plaintiff has also satisfied its burden to establish that the corporate defendants use was likely to cause confusion. There are seven factors to be considered as to the likelihood of confusion: (1) type of mark; (2) similarity of mark; (3) similarity of the products the marks represent; (4) similarity of the parties' retail outlets and customers; (5) similarity of advertising media; (6) defendant's intent; and (7) actual confusion. *Aronowitz v. Health-Chem Corp.*, 513 F.3d 1229, 1239 (11th Cir. Fla. 2008) (citation omitted). “Of these, the type of mark and the evidence of actual confusion are the most important.” *Id.*

Because the products in question were media shifted, the displayed trademarks were identical, or nearly identical to the original product. Thus, the similarity of the mark could not be distinguished from Plaintiff's registered mark. Defendants intended to make them indistinguishable and most customers likely never knew that they were viewing unauthorized copies of the karaoke tracks.<sup>8</sup>

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<sup>7</sup> If Plaintiff had satisfied its burden for usage for Mr. Paynter, his usage would also have been in commerce and in connection with the distribution of a service.

<sup>8</sup> If Plaintiff had satisfied its burden for usage for Mr. Paynter, they would have established this element.

Defendants argue that they had some form of implied consent to display the Sound Choice mark during their karaoke shows. In essence, their argument is that the “standard” warning contained on the discs was meant only to protect the copyright holder (i.e. the recording artist etc.) and not Plaintiff who was the trademark holder. They thus contend that they were free to transfer their disc collection to hard drive. None of the parties have cited a case on point. However, I find that a generalized warning which prohibits copying a disc is sufficient to put a user on notice that the trademark holders do not consent to copying their associated marks.

Defendants also assert that the media shifting policy is ineffective because it was not properly communicated to them. I need not reach this issue because I find that the standardized warning on the discs prohibited all copying by default.

## **B. Unfair Competition**

Section 43(a) of the Lanham Act creates civil liability for

[a]ny person who, on or in connection with goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof . . . which . . . is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person. . . .

15 U.S.C. § 1125(a)(1).

The facts which support a cause of action for trademark infringement also support a cause of action under unfair competition. *Chanel, Inc. v. Italian Activewear of Florida,*

*Inc.*, 931 F.2d 1472, 1475, n.3 (11th Cir. 1991). The same set of facts enabling a party to prevail under Section 1114(a)(1) will result in recovery pursuant to Section 1125. *Babbitt Elecs. v. Dynascan Corp.*, 38 F.3d 1161, 1181 (11th Cir. 1994) (citation omitted).

Plaintiff has therefore met its burden to establish that the corporate defendants engaged in unfair competition, but failed to meet its burden for Mr. Paynter. *Supra Section A.*

### **C. Deceptive and Unfair Trade Practices**

A claim for damages under Florida's Deceptive Trade Practices statute has three elements: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. *Wright v. Emory*, 41 So. 3d 290, 292 (Fla. 4th DCA 2010). Engaging in trademark infringement is an unfair and deceptive trade practice under this Section. *TracFone Wireless, Inc. v. Technopark Co., Ltd.*, 2012 U.S. Dist. LEXIS 58449, \*19-20 (S.D. Fla. 2012) (citing *Sun Protection Factory, Inc. v. Tender Corp.*, 2005 U.S. Dist. LEXIS 35623 (M.D. Fla. 2005)).

Plaintiff has therefore met its burden to establish that the corporate defendants engaged in deceptive and unfair trade practice, but failed to meet its burden for Mr. Paynter. *Supra Section A.*

### **D. Damages**

Each of Plaintiff's three counts require that Plaintiff establish damages. Under the trademark law, a registrant whose rights are violated may generally recover the

defendant's profits from the infringing activity (or its own damages or both) together with costs of the action. The registrant may also be entitled to injunctive relief. 15 U.S.C. § 1117(a).

In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

*Id.*

Proving the corporate defendants' sales is a difficult task in this case because Plaintiffs did not charge a fee for their karaoke shows or a fee to enter their establishment. The shows were an incident to their bar business. No reasonable calculations have been made which reliably track the percentage of the corporate defendants' bar sales which are linked to their karaoke performances. At Donovan's, karaoke is performed for 12.2% of their open hours. (Ex. 11). At Green Glass, karaoke is performed for 40.2 % of their open hours. *Id.* Plaintiff suggests that damages may be calculated by taking that portion of the corporate defendants' bar sales in proportion the

hours karaoke was available to customers.<sup>9</sup> I find that this methodology is flawed and is not supported by the text of Section 1117(a).

Section 1117(a) requires Plaintiff to “prove defendants’ sales.” Plaintiff may have proven defendants’ bar sales by a preponderance of the evidence. Plaintiff has not, however, traced those sales in a reliable way to karaoke performances. It is unreasonable to ascribe every liquor sale occurring in proportion to the hours when karaoke is playing to the karaoke performance itself.

Because defendants’ profits are an unreliable measure of damages, I find that Plaintiff’s own damages--its lost revenue--is the only reasonable approach. Plaintiff has sustained \$9,585.00 in damages which represent the amount of lost revenue for a total of 426 discs at the wholesale price. I find that this sum is justified and comports with the policies outlined in 15 U.S.C. § 1117(a)

I decline to enter an injunction against the future use of the Sound Choice mark because the boundaries of media shifting policy are ill defined and it would be difficult to fashion an injunction to comport with that policy. The defendants are now on notice that their use is subject to Plaintiff’s scrutiny and are cautioned that their future actions must comply with applicable trademark laws.

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<sup>9</sup> Plaintiff modifies the proportion that should be taken of defendants’ total sales using handwritten notes/calculations made by Defendants. (Ex. 11, Ex. 8-10). There is no competent testimony as to the meaning of those calculations beyond that they represent the total sales of the corporate defendants and the proportion of hours that karaoke was available. I do not find that they are an admission by the defendants that a certain percentage of their sales are directly attributable to karaoke.



**IT IS ORDERED:**

1. Judgment is entered in favor of Defendant Robert L. Paynter, Sr. and against Plaintiff Slep-Tone Entertainment Corporation. Plaintiff shall take nothing.
2. Judgment is entered in favor of Slep-Tone Entertainment Corporation and against Defendants Donovan's Reef Lounge & Package Store, Inc. and Green Glass Mall Inc. jointly and severally in the amount of \$9,585.00.

**ORDERED** on July 17, 2012.

/S/ Richard Smoak

**RICHARD SMOAK**

**UNITED STATES DISTRICT JUDGE**

**EXHIBIT 2**

*Filed 6/13/12*

Proposed Discovery Plan and Scheduling Order filed by the Hot Shots Defendants and the PTs Defendants in the case of *Slep-Tone Entertainment Corporation v. Ellis Island Casino & Brewery, et al.*, Case No. 2:12-cv-00239-KJD-RJJ, filed in the District of Nevada, Southern Division ("Las Vegas case").

**EXHIBIT 2**

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Starmaker Karaoke, Debbie Harm, Café Moda;  
Café Moda, LLC and William Carney

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SLEP-TONE ENTERTAINMENT  
CORPORATION,

Case No.: 2:12-cv-00239-KJD-RJJ

Plaintiff,

vs.

ELLIS ISLAND CASINO & BREWERY;  
FAME OPERATING COMPANY, INC.; HOT  
SHOTS BAR AND GRILL (a/k/a KELLEY'S  
PUB); THE PUB, LLC; JOE; DAN; BIG  
NAILS, LLC; BEAUTY BAR; CAFÉ MODA;  
CAFÉ MODA, LLC; WILLIAM CARNEY;  
LAS VEGAS DJ SERVICE; JONNY VALENTI;  
E STRING HRILL & POKER BAR; PCA  
TRAUTH, LLC; KARAOKE LAS VEGAS;  
JACK GREENBACK; BILL'S GAMBLIN'  
HALL & SALOON; CORNER INVESTMENT  
COMPANY, LLC; IMPERIAL PALACE  
HOTEL & CASINO; HARRASH'S IMPERIAL  
PALACE CORPORATION; ROLL 'N'  
MOBILE DJ'S AND KARAOKE TOO;  
KENNY ANGEL; PT'S PLACE; GOLDEN-  
PT'S PUB CHEYENNE-NELLIS 5, LLC; PT'S  
PUB; GOLDEN-PT'S PUB WEST SAHARA 8,  
LLC; PT'S GOLD; GOLDEN-PT'S PUB  
CENTENNIAL 32, LLC; GOLDEN PT'S PUB  
STEWART-NELLIS 2, LLC; FOLDEN  
TAVERN GROUP, LLC; STEVE & RAY

**PROPOSED DISCOVERY**  
**PLAN/SCHEDULING ORDER**

***SPECIAL SCHEDULING  
REVIEW REQUESTED***

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KARAOKE; STEVE; RAY; LEGENDS  
CASINO; PUGDAWIGS, LLC; STARMAKER  
KARAOKE DEBBIE HARMS; DECATUR  
RESTAURANT & TAVERN; DDRT, LLC;  
PUTTERS; LISA/CARRISON LTR; DJ TARA  
KING PRODUCTIONS; TARA KING; KIXX  
BAR; BOULDER STATION CASINO; NP  
BOULDER, LLC; NPPALACE, LLC; PALACE  
STATION; DANCING KARAOKE; KIRK;  
GILLEY'S LAS VEGAS; TREASURE  
ISLAND; TREASURE ISLAND, LLC; HALF  
SHELL SEAFOOD AND GAMIN; HALF  
SHELL, LLC; JAMES BELLAMY; MEGA-  
MUSIC PRODUCTIONS; MR. D'S SPORTS  
BAR; SPORTS BAR, LLC; RICK  
DOMINGUEZ; SOUND SELECT; ISLAND  
GRILL; OFFICE 7 LOUNGE &  
RESTAURANT, INC.; JAKE'S BAR; DOC, G.  
& G., INC.; MIKE CORRAL; DAVE CORRAL;  
SHOWTYME KARAOKE & DJ; CALICO  
JACK'S SALOON; MIKE R. GORDON; RED  
LABEL LOUNGE; RED LABEL BAR, INC.;  
TERRY CICC; TERRY-OKE KARAOKE;  
KJ'S BAR & GRILL; L.T. BOND, INC.; TIM  
MILLER; VISION & SOUND  
ENTERTAINMENT; THUNDERBIRD  
LOUNGE AND BAR; ARUBA HOTEL AND  
SPA; IRVINGTON PROPERTIES, LLC;  
THUNDERBIRD BAR & LOUNGE, LLC;  
AUDIO THERAPY DJ; MATTE McNULTY  
(a/k/a DJ Matte); AUDIO THERAPY; GSTI  
HOLDING, LLC; GOLD SPIKE HOTEL &  
CASINO; GOLD SPIKE HOLDINGS, LLC;  
MARDI GRAS LOUNGE-BEST WESTERN;  
THE NEVADIAN, LLC; BEST WESTERN  
MARDI GRAS INN; J.P.P.J. OF NEVADA,  
INC.; HARRAH'S LAS VEGAS; CAESAR'S  
ENTERTAINMENT CORPORATION; TJ'S  
ALL-STARK KARAOKE; JOHN MENNITI;  
and JOHN DOES NOS. 1-10 INCLUSIVE,  
IDENTITIES UNKNOWN,

Defendants.

**PROPOSED DISCOVERY PLAN/SCHEDULING ORDER**

Pursuant to Local Rule 26-1, the parties submit the following Discovery Plan and  
Scheduling Order.

**I. INFORMATION PURSUANT TO FRCP 26(F).**

1. The first Defendants filed a Motion to Dismiss on March 16, 2012 [#13].

2. Pursuant to FRCP 26(f) the counsel for the plaintiff shall initiate the scheduling of a meeting within thirty (30) days after the first defendant answers or otherwise appears. To date, no meeting has been held or scheduled by the Plaintiff. Nevertheless, the instant parties are submitting the instant proposed discovery plan/scheduling order pursuant to the order of this Court.

3. The parties have not exchanged their initial disclosure statements.

4. Discovery may be conducted on all matters relevant to issues raised by subsequent pleadings and all matters otherwise within the scope of Rule 26(b)(1) and not protected from disclosure.

5. No changes in limitations set by either the Federal Rules of Civil Procedure or Local Rules of Practice for the District of Nevada are requested at this time.

6. No orders are requested to be entered pursuant to FRCP 16(b), 16(c) or 26(c) at this time.

7. **Special Scheduling Review Requested:** Defendants Hot Shots Bar and Grill, The Pub, LLC, Joe, Dan, Decatur Restaurant & Tavern, DDRT, LLC, Starmaker Karaoke, Debbie Harm ("Hot Shot Defendants") filed their Motion to Dismiss to Plaintiff's Complaint on April 12, 2010. [#46]. Defendants Café Moda; Café Moda, LLC and William Carney ("Café Moda Defendants") filed there joinder thereto on April 26, 2012. [#54]. Plaintiff's filed an untimely opposition on to #46 on May 10, 2012. [#65]. Because of a multiple pending motions to dismiss, some Defendants (including the Café Moda Defendants) have yet to file an answer. As such, the instant parties respectfully request that this Court forgive their failure to file a Proposed Discovery Plan and Scheduling Order and allow discovery to close beyond the 180 days required by Local Rule 26-1(e)(1) as outlined below.

## **II. INFORMATION PURSUANT TO LOCAL RULE 26-1(E).**

### **1. Discovery Cutoff Date:**

The last day of discovery shall be one year from the date of filing of the Complaint or on or before February 18, 2013.

1                   2.     **Amending the Pleadings and Adding Parties:**

2             In accordance with Local Rule 26-1(e)(2), the last day to file a motion to amend the  
3 pleadings or to add parties shall be November 16, 2012.

4                   3.     **Experts:**

5             In accordance with Local Rule 26-1(e)(3), the last day for disclosures as required by  
6 FRCP 26(a)(2)(c) concerning experts shall be December 18, 2012. The last day for disclosures  
7 concerning rebuttal experts shall be January 18, 2012.

8                   4.     **Dispositive Motions:**

9             In accordance with Local Rule 26-1(e)(4), the last day for filing dispositive motions  
10 including, but not limited to motions for summary judgment, shall be March 18, 2013.

11                  5.     **Pretrial Order:**

12             In accordance with Local Rule 26-1(e)(5), the last day to file a Joint Pretrial Order,  
13 including any disclosures pursuant to FRCP 26(a)(3), shall be April 18, 2012. In the event  
14 dispositive motions are filed, the date for filing the Joint Pretrial Conference shall be suspended  
15 until thirty (30) days after decision on the dispositive motion or upon further Order by the Court  
16 extending the time period in which to file the Joint Pretrial Order.

17     **III. EXTENSION OF SCHEDULED DEADLINES.**

18             In accordance with Local Rule 26-4, a request for an extension of this discovery plan  
19 shall be filed and served no later than twenty (20) days before the discovery cut off date.

20             DATED this 13<sup>th</sup> day of June, 2012.

21                             **MARQUIS AURBACH COFFING**

22                             By: /s/ Brian R. Hardy

23                             TERRY A. COFFING, ESQ.

24                             Nevada Bar No. 4949

25                             JOHN M. SACCO, ESQ.

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27                             BRIAN R. HARDY, ESQ.

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                              Las Vegas, Nevada 89145

                              Attorneys for Hot Shots Bar and Grill,

                              The Pub, LLC, Joe, Dan, Starmaker

                              Karaoke, Debbie Harm, Café Moda;

                              Café Moda, LLC and William Carney

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

UNITED STATES DISTRICT COURT JUDGE

**MARQUIS AURBACH COFFING**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**EXHIBIT 3**

*Filed 6/19/12*

Proposed Discovery Plan and Scheduling Order filed by the Hot Shots Defendants and the PTs Defendants in the case of *Slep-Tone Entertainment Corporation v. Ellis Island Casino & Brewery, et al.*, Case No. 2:12-cv-00239-KJD-RJJ, filed in the District of Nevada, Southern Division (“Las Vegas case”).

**EXHIBIT 3**



1 Mark G. Tratos (Nevada Bar No. 1086)  
Lauri S. Thompson (Nevada Bar No. 6846)  
2 Peter H. Ajemian (Nevada Bar No. 9491)  
GREENBERG TRAURIG, LLP  
3 3773 Howard Hughes Parkway  
Suite 400 North  
4 Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
5 Facsimile: (702) 792-9002

6 Counsel for Defendants

7  
8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 SLEP-TONE ENTERTAINMENT  
CORPORATION,

11 Plaintiff,

12 vs.

13 ELLIS ISLAND CASINO & BREWERY, et  
14 al.,

15 Defendants.

Case No. 2:12-cv-00239-KJD-RJJ

**[PROPOSED] DISCOVERY PLAN  
AND SCHEDULING ORDER BY  
DEFENDANTS PT'S PLACE;  
GOLDEN-PT'S PUB CHEYENNE-  
NELLIS 5, LLC; PT'S PUB; GOLDEN-  
PT'S PUB WEST SAHARA 8, LLC;  
PT'S GOLD; GOLDEN-PT'S PUB  
CENTENNIAL 32, LLC; GOLDEN-PT'S  
PUB STEWART-NELLIS 2, LLC; AND  
GOLDEN TAVERN GROUP, LLC**

16  
17  
18 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1, Defendants  
19 PT'S PLACE; GOLDEN-PT'S PUB CHEYENNE-NELLIS 5, LLC; PT'S PUB; GOLDEN-PT'S  
20 PUB WEST SAHARA 8, LLC; PT'S GOLD; GOLDEN-PT'S PUB CENTENNIAL 32, LLC;  
21 GOLDEN-PT'S PUB STEWART-NELLIS 2, LLC; GOLDEN TAVERN GROUP, LLC  
22 (collectively "PT's Defendants") hereby submit to the Court the following proposed  
23 discovery plan and scheduling order.

24 1. Meeting. Pursuant to FRCP 26(f), counsel for plaintiff shall initiate the scheduling  
25 of a meeting within thirty (30) days after the first defendant answers or otherwise appears.  
26 The first defendants filed a Motion to Dismiss on March 16, 2012 [docket no. 13]. To date,  
27 no meeting has been scheduled or held by Plaintiff. Pursuant to the Court Order, the PT's  
28 Defendants are submitting this proposed discovery plan and scheduling order.

1           2. Pre-Discovery Disclosures. The parties have not exchanged their initial  
2 disclosure statements.

3           3. Discovery Plan. The PT's Defendants submit that all discovery in this case will  
4 be conducted in accordance with the Federal Rules of Civil Procedure. The parties differ in  
5 their opinion as to the time needed for the completion of discovery and request the  
6 assistance of the Court to determine appropriate discovery deadlines. The PT's  
7 Defendants filed their Motion to Dismiss on March 16, 2012 [docket no. 13] and their  
8 Motion to Sever on May 11, 2012 [docket no. 68]. Plaintiff filed their opposition to the PT's  
9 Defendants' Motion to Dismiss on April 10, 2012 [docket no. 43] and their opposition to the  
10 PT's Defendants' Motion to Sever on May 31, 2012 [docket no. 75].

11           The parties propose the following discovery overview, discovery plan and cutoff  
12 dates:

13           (a) Discovery Cut-off Date. Due to the PT's Defendants' pending motions, the PT's  
14 Defendants have yet to file an answer to the Complaint. A hearing date for the Motion to  
15 Dismiss and Motion to Sever has not been set by the Court. The PT's Defendants propose  
16 the discovery cut-off date be set for 180 days from the date of this Court's decision on their  
17 pending Motion to Dismiss and Motion to Sever.

18           (b) Amending the Pleadings and Adding Parties. The PT's Defendants propose the  
19 last date for filing motions to amend the pleadings or to add parties shall be 90 days prior to  
20 the close of fact discovery.

21           (c) Expert Discovery. The PT's Defendants propose the deadline for disclosing  
22 initial expert witnesses shall be 60 days prior to the close of fact discovery. The PT's  
23 Defendants propose the deadline for disclosing rebuttal expert witnesses shall be 30 days  
24 after the date to disclose initial experts.

25           (d) Dispositive Motions: The PT's Defendants propose that dispositive motions shall  
26 be filed at least 30 days after the close of discovery.

27           (e) Joint Pretrial Order. The PT's Defendants propose the Joint Pretrial Order shall  
28 be filed 30 days after the deadline for filing dispositive motions. However, if dispositive

1 motions have been filed, the Joint Pretrial Order shall be due thirty days after a decision or  
2 by further order of the Court. Disclosures under Rule 26(a)(3) of the Federal Rules of Civil  
3 Procedure and any objections thereto shall be included in the Joint Pretrial Order.

4 DATED this 19th day of June, 2012.

5 Respectfully submitted,

6 GREENBERG TRAURIG, LLP

7 By: /s/ Lauri S. Thompson

8 MARK G. TRATOS, ESQ.

9 Nevada Bar No. 1086

10 Lauri S. Thompson, Esq.

11 Nevada Bar No. 6846

12 PETER H. AJEMIAN, ESQ.

13 Nevada Bar No. 9491

14 GREENBERG TRAURIG, LLP

15 3773 Howard Hughes Pkwy., Ste 400 North  
16 Las Vegas, Nevada 89169

17 *Counsel for PT's Defendants*

18 IT IS SO ORDERED:

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES MAGISTRATE JUDGE

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2012, I served the foregoing **[PROPOSED]**  
**DISCOVERY PLAN AND SCHEDULING ORDER BY DEFENDANTS PT'S PLACE;**  
**GOLDEN-PT'S PUB CHEYENNE-NELLIS 5, LLC; PT'S PUB; GOLDEN-PT'S PUB WEST**  
**SAHARA 8, LLC; PT'S GOLD; GOLDEN-PT'S PUB CENTENNIAL 32, LLC; GOLDEN-**  
**PT'S PUB STEWART-NELLIS 2, LLC; AND GOLDEN TAVERN GROUP, LLC** via the  
Court's CM/ECF filing system to all counsel of record and parties as listed.

/s/ Cynthia L. Ney  
An employee of GREENBERG TRAURIG, L

Greenberg Traurig, LLP  
Suite 400 North, 3773 Howard Hughes Parkway  
Las Vegas, Nevada 89109  
(702) 792-3773  
(702) 792-8002 (fax)

**EXHIBIT 4**

Affidavit of Joe Gaytan in Support of Motion to Dismiss

**EXHIBIT 4**

## AFFIDAVIT OF JOE GAYTAN IN SUPPORT OF MOTION TO DISMISS

STATE OF ILLINOIS                     )  
                                                      ) ss.  
COUNTY OF KANE                     )

I, Joe Gaytan, being duly sworn, depose and say:

1. I am a defendant in case of Slep-Tone Entertainment Corporation, et al. v. Diane Klemz, et al. Case No. 14-cv-189, filed in the United States District Court, District of Northern Illinois, am over the age of eighteen years, am competent to make this declaration based on my own personal knowledge and have done so of my own free will, and I could testify as to the facts contained herein under oath in a court of law if called upon to do so.

2. I am not in possession of any Sound Choice discs. However, vast majority Sound Choice discs do not have a "TM" or "®" symbol following the Sound Choice logo on the face of the disc, and none of the Sound Choice discs that I have seen have the TM or ® mark next to the Sound Choice logo when the disc is actually played, and the Sound Choice logo is displayed on a television screen.

3. Sound Choice discs do contain a warning of a different nature which, if followed to the letter, would not allow for any karaoke performance at any public venue. Such "karaoke shows" are now, and have always been, Slep-Tone's and all other karaoke disc manufactures' bread and butter as the shows introduce people to karaoke, and most karaoke discs are sold to KJs specifically for that purpose. The warning states,

WARNING: THIS MATERIAL IS PROTECTED BY FEDERAL COPYRIGHT LAWS,  
UNAUTHORIZED DUPLICATION, PUBLIC PERFORMANCE, OR BROADCAST IS A  
VIOLATION OF APPLICABLE LAWS. THESE ARE PROFESSIONAL RE-CREATIONS  
AND NOT RENDITIONS BY THE ORIGINAL ARTIST.

4. Sound Choice has a safe harbor website at [www.scsafeharbor.com](http://www.scsafeharbor.com). Some of the quotes from the Sound Choice safe harbor website are as follows:

If you are playing directly from original Sound Choice discs, you are operating legally, from Sound Choice's perspective. We can't speak for other parties, such as other producers, music publishers, or ASCAP/BMI/SESAC.

\* \* \* \*

We will use the information you provide us to verify that you are operating legally--or, if not, to help you get legal and square with our policies. We may also use that information against you in a lawsuit, if that becomes necessary. We may also use your information to notify you about developments in the karaoke industry that you might be interested in, or, with your permission, to tell you about karaoke products you might want to buy.

\* \* \* \*

### **Dose signing up guarantee I won't get sued?**

No. The safe harbor applies to non-owner venues, not to hosts. See [www.scsafeharbor.com/hostfaq.php](http://www.scsafeharbor.com/hostfaq.php).

\* \* \* \*

If you don't want to play from CDs, we understand. A large collection of CDs takes up a lot of space. Bringing your CDs to a venue exposes them to theft and loss. CDs can get scratched from too much

handling. If you choose the convenience of a hard drive system, we understand the technical reasons for doing so. But, let's be clear: For legal reasons, Sound Choice does not authorize the use of hard drive systems to play our karaoke music commercially. But we will agree not to sue you for "media-shifting" the contents of our CD+Gs or MP3+G discs if you follow our media-shifting policy. See [www.scsafeharbor.com/stayinglegal.php](http://www.scsafeharbor.com/stayinglegal.php).

5. In a response to a Sound Choice hate site, [www.soundchoicesucks.com](http://www.soundchoicesucks.com), Kurt Slep, the CEO of Slep-Tone Entertainment Corporation and Sound Choice, wrote:

IN ALL CASES, we have more evidence than is named or given in our complaints - but there is not a need to show our hand in our legal filings. The opposing party can ask to see that evidence during their depositions if they decide to fight. However, we cannot legally file without legitimate legal grounds and for those whose OPINION is that we don't, if you are named in a future suit, you can follow that tact at your own risk. We do not need to have all details on an individual before filing and/or serving someone - the clerk of court's office has resources at its disposal for finding people when it comes time to serve them. If you are really interested in our methodology, we are trying to keep our costs low so that we can keep your settlement costs low. But we are following local laws in all of our actions, although we are filing in Federal court, since Trademark infringement is a Federal offense.

\*\*\*

We do not have the rights from the Music Publishers (who represent the song writers) to grant the transfer of our music from the CDG to a hard drive, that is why we have not licensed "hard drives" per se. HOWEVER, we are willing to not take action (although, nor indemnify) a KJ who chooses to do so for reasons of ease of operation PROVIDED THAT HE HAS A LEGALLY PURCHASED DISC FOR EACH AND EVERY SONG ON EACH AND EVERY HARD DRIVE (or CAVS type ) SYSTEM. That is what we (and KIAA) are referring to as "1:1".

\*\*\*

If any of you have followed recent court cases filed by the RIAA against file sharers, you have seen average settlements in the range of \$80,000 PER SONG, which is still only about half the maximum for copyright infringement. Trademark is \$200,000 per mark with that going up to \$2,000,000 for willful infringement. And these cases were against home users; in our suits, there is commercial use of our IP, thus very few "personal" protections and higher penalties - there is no "fair use" provision for commercial use of federally protected intellectual property rights....

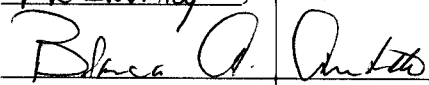
See [www.soundchoicesucks.blogspot.com/2010/02/statement-from-sound-choiceceo-kurt.html](http://www.soundchoicesucks.blogspot.com/2010/02/statement-from-sound-choiceceo-kurt.html).

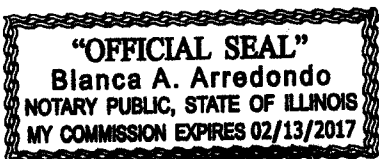
Further Affiant Sayeth Naught.

Dated this 27<sup>th</sup> day of FEBRUARY, 2014.

  
Joe Gaytan

SUBSCRIBED and SWORN to before me this 27<sup>th</sup> day of FEBRUARY, 2014.

  
NOTARY PUBLIC in and for said COUNTY and STATE



**EXHIBIT 5**

Complaint in the Las Vegas Case No. 2:12-cv-00239-KJD-RJJ

**EXHIBIT 5**



1 Donna Boris (California SBN 153033)  
2 Verified Petition to be filed within 45 days  
3 donna@borislaw.com  
4 Boris & Associates  
5 9107 Wilshire Blvd., Suite 450  
6 Beverly Hills, CA 90210  
7 (310) 492-5962 ♦ (310) 388-5920 facsimile

8 Kerry P. Faughnan (Nevada SBN 12204)  
9 kerry.faughnan@gmail.com  
10 Law Offices of Kerry Faughnan  
11 P.O. Box 335361  
12 North Las Vegas, NV 89033  
13 (702) 301-3096 ♦ (702) 331-4222 facsimile

14 Attorneys for Plaintiff  
15 Slep-Tone Entertainment Corporation

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 SLEP-TONE ENTERTAINMENT  
14 CORPORATION,

15 Plaintiffs,

16 v.

17 ELLIS ISLAND CASINO & BREWERY;  
18 FAME OPERATING COMPANY, INC.;  
19 HOT SHOTS BAR AND GRILL (a/k/a  
20 KELLEY'S PUB); THE PUB, LLC; JOE;  
21 DAN; BIG NAILS, LLC; BEAUTY BAR;  
22 CAFÉ MODA; CAFÉ MODA, LLC;  
23 WILLIAM CARNEY; LAS VEGAS DJ  
24 SERVICE; JOHNNY VALENTI; E  
25 STRING GRILL & POKER BAR; PCA  
TRAUTH, LLC; KARAOKE LAS VEGAS;  
JACK GREENBACK; BILL'S GAMBLIN'  
HALL & SALOON; CORNER  
INVESTMENT COMPANY, LLC;  
IMPERIAL PALACE HOTEL & CASINO;  
HARRAH'S IMPERIAL PALACE  
CORPORATION; ROLL 'N' MOBILE  
DJ'S AND KARAOKE TOO; KENNY  
ANGEL; PT'S PLACE; GOLDEN-PT'S

Case No.:

**COMPLAINT FOR:**

**(1) TRADEMARK INFRINGEMENT**  
**15 U.S.C. § 1114**

**(2) LANHAM ACT UNFAIR**  
**COMPETITION**  
**15 U.S.C. § 1125**

**Jury Trial Demanded**

1 PUB CHEYENNE-NELLIS 5, LLC; PT'S  
2 PUB; GOLDEN-PT'S PUB WEST  
3 SAHARA 8, LLC; PT'S GOLD; GOLDEN-  
4 PT'S PUB CENTENNIAL 32, LLC;  
5 GOLDEN-PT'S PUB STEWART-NELLIS  
6 2, LLC; GOLDEN TAVERN GROUP,  
7 LLC; STEVE & RAY KARAOKE; STEVE;  
8 RAY; LEGENDS CASINO; PUGDAWGS,  
9 LLC; STARMAKER KARAOKE; DEBBIE  
10 HARMS; DECATUR RESTAURANT &  
11 TAVERN; DDRT, LLC; PUTTERS;  
12 LISA/CARRISON LTD; DJ TARA KING  
13 PRODUCTIONS; TARA KING; KIXX  
14 BAR; BOULDER STATION CASINO; NP  
15 BOULDER, LLC; NPPALACE, LLC;  
16 PALACE STATION; DANSING  
17 KARAOKE; KIRK; GILLEY'S LAS  
18 VEGAS; TREASURE ISLAND;  
19 TREASURE ISLAND, LLC; HALF SHELL  
20 SEAFOOD AND GAMING; HALF  
21 SHELL, LLC; JAMES BELLAMY;  
22 MEGA-MUSIC PRODUCTIONS; MR. D'S  
23 SPORTS BAR; SPORTS BAR, LLC; RICK  
24 DOMINGUEZ; SOUND SELECT;  
25 ISLAND GRILL; OFFICE 7 LOUNGE &  
RESTAURANT, INC.; JAKE'S BAR;  
DOC, G. & G., INC.; MIKE CORRAL;  
DAVE CORRAL; SHOWTYME  
KARAOKE & DJ; CALICO JACK'S  
SALOON; MIKE R. GORDON; RED  
LABEL LOUNGE; RED LABEL BAR,  
INC.; TERRY CICCII; TERRY-OKE  
KARAOKE; KJ'S BAR & GRILL; L.T.  
BOND, INC.; TIM MILLER; VISION &  
SOUND ENTERTAINMENT;  
THUNDERBIRD LOUNGE AND BAR;  
ARUBA HOTEL AND SPA; IRVINGTON  
PROPERTIES, LLC; THUNDERBIRD  
BAR & LOUNGE, LLC; AUDIO  
THERAPY DJ; MATTE McNULTY (a/k/a  
"DJ Matte"); AUDIO THERAPY; GSTI  
HOLDINGS, LLC; GOLD SPIKE HOTEL  
& CASINO; GOLD SPIKE HOLDINGS,  
LLC; MARDI GRAS LOUNGE - BEST  
WESTERN; THE NEVADIAN, LLC;  
BEST WESTERN MARDI GRAS INN;

1 J.P.P.J. OF NEVADA, INC.; HARRAH'S  
2 LAS VEGAS; CAESAR'S  
3 ENTERTAINMENT CORPORATION;  
4 TJ'S ALL-STAR KARAOKE; JOHN  
5 MENNITI; and JOHN DOES NOS. 1-10  
6 INCLUSIVE, IDENTITIES UNKNOWN,  
7  
8 Defendants.

9  
10 The Plaintiff, SLEP-TONE ENTERTAINMENT CORPORATION ("SLEP-TONE"), by  
11 its undersigned counsel, complains of the Defendants and for its complaint alleges as follows:  
12

13 **JURISDICTION AND VENUE**

14 1. This is an action for trademark infringement and unfair competition arising under  
15 §§ 32 and 43 of the Trademark Act of 1946, 15 U.S.C. §§ 1114 and 1125. This Court has  
16 exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, in that  
17 this is a civil action arising under the laws of the United States. This Court also has jurisdiction  
18 pursuant to 28 U.S.C § 1338(a), in that this civil action arises under an Act of Congress relating  
19 to trademarks, and, as to the Plaintiff's Lanham Act unfair competition claim, pursuant to 28  
20 U.S.C. § 1338(b), in that the claim is joined with a substantial and related claim under the  
21 trademark laws of the United States.

22 2. Venue is proper in this District in that all defendants reside in Nevada and at least  
23 one defendant resides in this District. Venue is also proper in this District because a substantial  
24 part of the events or omissions giving rise to the claim occurred in this District.

25 **THE PLAINTIFF**

3 Plaintiff SLEP-TONE is a North Carolina corporation having its principal place  
of business at 14100 South Lakes Drive, Charlotte, North Carolina.

///

///

**THE DEFENDANTS**

4. Defendants ELLIS ISLAND CASINO & BREWERY and FAME OPERATING COMPANY, INC. have their principal business address in Las Vegas, Nevada and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

5. Defendants THE PUB, LLC and HOT SHOTS BAR AND GRILL (a/k/a KELLEY'S PUB) and Defendants JOE and DAN have their principal business address in Las Vegas, Nevada, and operate eating and drinking establishment(s) at which karaoke entertainment is provided by Defendants JOE and DAN.

6. Defendants BIG NAILS, LLC and BEAUTY BAR have their principal business address in Las Vegas, Nevada and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

7. Defendants CAFÉ MODA, CAFÉ MODA, LLC and WILLIAM CARNEY have their principal business address in Las Vegas, Nevada and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

8. Defendants LAS VEGAS DJ SERVICE and JOHNNY VALENTI (a/k/a "Johnny V") have their principal business address in Las Vegas, Nevada and are engaged in the business of providing karaoke entertainment at multiple venues in this State using multiple karaoke systems.

9. Defendants E STRING GRILL & POKER BAR and PCA TRAUTH, LLC have their principal place of business in Las Vegas, Nevada and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

10. Defendants KARAOKE LAS VEGAS and JACK GREENBACK have their principal business address in Las Vegas, Nevada and are engaged in the business of providing karaoke entertainment at multiple venues in this State using multiple karaoke systems.

1           11. Defendants BILL'S GAMBLIN' HALL & SALOON and CORNER  
2 INVESTMENT COMPANY, LLC have their principal place of business in Las Vegas, Nevada  
3 and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

4           12. Defendants IMPERIAL PALACE HOTEL & CASINO and HARRAH'S  
5 IMPERIAL PALACE CORPORATION have their principal place of business in Las Vegas,  
6 Nevada and operate eating and drinking establishment(s) at which karaoke entertainment is  
7 provided.

8           13. Defendants ROLL 'N' MOBILE DJ'S AND KARAOKE TOO and KENNY  
9 ANGEL have their principal business address in Las Vegas, Nevada and are engaged in the  
10 business of providing karaoke entertainment at multiple venues in this State using multiple  
11 karaoke systems.

12           14. Defendants PT'S PLACE and GOLDEN-PT'S PUB CHEYENNE-NELLIS 5,  
13 LLC have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
14 establishment(s) at which karaoke entertainment is provided.

15           15. Defendants PT'S PUB and GOLDEN-PT'S PUB WEST SAHARA 8, LLC have  
16 their principal place of business in Las Vegas, Nevada and operate eating and drinking  
17 establishment(s) at which karaoke entertainment is provided.

18           16. Defendants PT'S GOLD and GOLDEN-PT'S PUB CENTENNIAL 32, LLC have  
19 their principal place of business in Las Vegas, Nevada and operate eating and drinking  
20 establishment(s) at which karaoke entertainment is provided.

21           17. Defendants PT'S PLACE and GOLDEN-PT'S PUB STEWART-NELLIS 2, LLC  
22 have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
23 establishment(s) at which karaoke entertainment is provided.

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25 ///

1           18. Defendants PT'S PUB and GOLDEN TAVERN GROUP, LLC have their  
2 principal place of business in Las Vegas, Nevada and operate eating and drinking  
3 establishment(s) at which karaoke entertainment is provided.

4           19. Defendants STEVE & RAY KARAOKE and STEVE and RAY have their  
5 principal business address in Las Vegas, Nevada and are engaged in the business of providing  
6 karaoke entertainment at multiple venues in this State using multiple karaoke systems.

7           20. Defendants LEGENDS CASINO and PUGDAWGS, LLC have their principal  
8 place of business in Las Vegas, Nevada and operate eating and drinking establishment(s) at  
9 which karaoke entertainment is provided.

10           21. Defendants STARMAKER KARAOKE and DEBBIE HARMS have their  
11 principal business address in Las Vegas, Nevada and are engaged in the business of providing  
12 karaoke entertainment at multiple venues in this State using multiple karaoke systems.

13           22. Defendants DECATUR RESTAURANT & TAVERN and DDRT, LLC have their  
14 principal place of business in Las Vegas, Nevada and operate eating and drinking  
15 establishment(s) at which karaoke entertainment is provided.

16           23. Defendants PUTTERS and LISA/CARRISON LTD have their principal place of  
17 business in Las Vegas, Nevada and operate eating and drinking establishment(s) at which  
18 karaoke entertainment is provided.

19           24. Defendants DJ TARA KING PRODUCTIONS and TARA KING have their  
20 principal business address in Las Vegas, Nevada and are engaged in the business of providing  
21 karaoke entertainment at multiple venues in this State using multiple karaoke systems.

22           25. Defendants KIXX BAR, BOULDER STATION CASINO and NP BOULDER,  
23 LLC have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
24 establishment(s) at which karaoke entertainment is provided.

25       ///

1           26. Defendants JACK'S IRISH PUB, NP PALACE, LLC and PALACE STATION  
2 have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
3 establishment(s) at which karaoke entertainment is provided.

4           27. Defendants DANSING KARAOKE and KIRK (a/k/a "The Urban Cowboy – DJ"  
5 and "DJ Captain Kirk") have their principal business address in Las Vegas, Nevada and are  
6 engaged in the business of providing karaoke entertainment at multiple venues in this State using  
7 multiple karaoke systems.

8           28. Defendants GILLEY'S LAS VEGAS, TREASURE ISLAND and TREASURE  
9 ISLAND, LLC have their principal place of business in Las Vegas, Nevada and operate eating  
10 and drinking establishment(s) at which karaoke entertainment is provided.

11           29. Defendants HALF SHELL SEAFOOD AND GAMING and HALF SHELL, LLC  
12 have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
13 establishment(s) at which karaoke entertainment is provided.

14           30. Defendants JAMES BELLAMY and MEGA-MUSIC PRODUCTIONS have their  
15 principal business address in Las Vegas, Nevada and are engaged in the business of providing  
16 karaoke entertainment at multiple venues in this State.

17           31. Defendants MR. D'S SPORTS BAR and SPORTS BAR, LLC have their  
18 principal place of business in Las Vegas, Nevada and operate eating and drinking  
19 establishment(s) at which karaoke entertainment is provided.

20           32. Defendants RICK DOMINGUEZ (a/k/a "Rick D") and SOUND SELECT are  
21 engaged in the business of providing karaoke entertainment at multiple venues in this State.

22           33. Defendants ISLAND GRILL and OFFICE 7 LOUNGE & RESTAURANT, INC.  
23 have their principal place of business in Las Vegas, Nevada and operate eating and drinking  
24 establishment(s) at which karaoke entertainment is provided.

25       ///

1           34. Defendants JAKE'S BAR and DOC, G. & G., INC. have their principal place of  
2 business in Las Vegas, Nevada and operate eating and drinking establishment(s) at which  
3 karaoke entertainment is provided.

4           35. Defendants MIKE CORRAL, DAVE CORRAL (a/k/a "Crazy Dave" and "Mad  
5 Mike"), and SHOWTYME KARAOKE & DJ have their principal business address in Las  
6 Vegas, Nevada and are engaged in the business of providing karaoke entertainment at venue(s)  
7 in this State.

8           36. Defendants CALICO JACK'S SALOON and MIKE R. GORDON have their  
9 principal place of business in Las Vegas, Nevada and operate eating and drinking  
10 establishment(s) at which karaoke entertainment is provided.

11           37. Defendants RED LABEL LOUNGE and RED LABEL BAR, INC. have their  
12 principal place of business in Las Vegas, Nevada and operate eating and drinking  
13 establishment(s) at which karaoke entertainment is provided.

14           38. Defendants TERRY CICCİ and TERRY-OKE KARAOKE have their principal  
15 business address in Las Vegas, Nevada and are engaged in the business of providing karaoke  
16 entertainment at multiple venues in this State.

17           39. Defendants KJ'S BAR & GRILL AND L.T. BOND, INC. have their principal  
18 place of business in Las Vegas, Nevada and operate eating and drinking establishment(s) at  
19 which karaoke entertainment is provided.

20           40. Defendants TIM MILLER (a/k/a "Diamond Tim") and VISION & SOUND  
21 ENTERTAINMENT have their principal business address in Las Vegas, Nevada and are  
22 engaged in the business of providing karaoke entertainment at venue(s) in this State.

23           41. Defendants THUNDERBIRD LOUNGE AND BAR; ARUBA HOTEL AND  
24 SPA; IRVINGTON PROPERTIES, LLC and THUNDERBIRD BAR & LOUNGE, LLC have  
25



1 their principal place of business in Las Vegas, Nevada and operate eating and drinking  
2 establishment(s) at which karaoke entertainment is provided.

3 42. Defendants AUDIO THERAPY and MATTE McNULTY (a/k/a "DJ Matte")  
4 have their principal business address in Las Vegas, Nevada and are engaged in the business of  
5 providing karaoke entertainment at multiple venues in this State using multiple karaoke systems.

6 43. Defendants GOLD SPIKE HOTEL AND CASINO, GOLD SPIKE HOLDINGS,  
7 LLC and GSTI HOLDINGS, LLC have their principal place of business in Las Vegas, Nevada  
8 and operate eating and drinking establishment(s) at which karaoke entertainment is provided.

9 44. Defendants MARDI GRAS LOUNGE – BEST WESTERN and THE  
10 NEVADIAN, INC. have their principal place of business in Las Vegas, Nevada and operate  
11 eating and drinking establishment(s) at which karaoke entertainment is provided.

12 45. Defendants BEST WESTERN MARDI GRAS INN and J.P.P.J. OF NEVADA,  
13 INC. have their principal place of business in Las Vegas, Nevada and operate eating and  
14 drinking establishment(s) at which karaoke entertainment is provided.

15 46. The true names and capacities, whether individual, corporate, associate, partner or  
16 otherwise of Defendants named herein as Does 1 through 10 inclusive, are unknown to Plaintiff  
17 at this time, and Plaintiff therefore sues these Defendants by such fictitious names. Plaintiff will  
18 amend this Complaint to allege their true names and capacities when ascertained.

19 **BACKGROUND FACTS**

20 47. Slep-Tone is the manufacturer and distributor of karaoke accompaniment tracks  
21 sold under the name "Sound Choice." Slep-Tone was founded 25 years ago by Kurt and Derek  
22 Slep, two brothers with a vision to nurture the development of karaoke in America as a  
23 participatory entertainment phenomenon.

24 ///

25 ///

1           48. Sound Choice is recognized as one of the leading producers of high quality  
2 karaoke accompaniment tracks. The company has invested over \$18 million to re-record and  
3 replicate the authentic sound of popular music across different eras and genres of music.

4           49. Slep-Tone's dedication to producing music of the highest quality and the most  
5 authentic character led to its music becoming the staple of almost every karaoke show in the  
6 country. As karaoke grew in popularity, Sound Choice became the brand that nearly every  
7 karaoke fan wanted to sing and that nearly every karaoke jockey ("KJ") wanted in his or her  
8 library.

9           50. KJs play karaoke songs using compact disks containing files written in one of two  
10 special encoded formats, either "CD+G" ("compact disk plus graphics") or "MP3G" ("MP3  
11 plus graphics"), in which the disk contains the music and the lyrics, which will display on a  
12 screen.

13           51. In recent years, computer technology, cheap file memory devices, and the internet  
14 have made it possible for karaoke disks to be decoded and "ripped" (copied) to a user's hard  
15 drive and easily copied and distributed between KJs. This technology has proven irresistible to  
16 KJs, many of who have used this opportunity to copy one purchased disk to several different  
17 computer based systems, copy a singer's personal disks if they use them during a show, "swap"  
18 song files among each other, download them from illegal file sharing sites and build libraries of  
19 tens of thousands of karaoke songs without paying for them.

20           52. Whereas in the past a KJ would buy multiple copies of an original disk if he or  
21 she desired to operate multiple systems, now they simply "clone" their songs for multiple  
22 commercial systems or even their entire karaoke song libraries to start a new operation.

23  
24  
25           <sup>1</sup> MP3 is an acronym standing for "Moving Picture Experts Group Audio Layer 3." MP3G is a far newer format than  
CD+G and is significantly more portable than CD+G. The Plaintiff has only recently begun distributing its karaoke tracks in this  
format, and only under tight contractual controls that require user registration and audits, confine possession to professional  
karaoke operators, include serialization of licensed disks, and prohibit file sharing under pain of forfeiture of license rights.

1 Additionally, many KJs or operators starting in the business simply buy computer drives pre-  
2 loaded with thousands of illegally copied songs.

3 53. These practices have become so widespread that Slep-Tone has been driven  
4 nearly out of business. At its peak, the Sound Choice family of companies employed 75  
5 individuals and produced as many as 5 new karaoke disks per month. Today, the enterprise  
6 employs fewer than 10 individuals.

7 54. Sound Choice Studios, Inc. which was SLEP-TONE's sister company, was  
8 responsible for recording new music for Karaoke. Sound Choice Studios, Inc. lost money on  
9 every recent new karaoke disk and was driven out of business because it could no longer  
10 profitably produce new music as illegally copying of its products has skyrocketed. The most  
11 recent new disk did not produce enough revenue even to cover the production and licensing costs  
12 associated with it—yet the songs from that disk can be found on as many as 30,000 karaoke  
13 systems around the United States. In the future, SLEP-TONE will have to subcontract to ex-  
14 employees of Sound Choice Studios, Inc. who purchased its assets, if/when it is able to profitably  
15 release new titles again.

16 55. For KJs, karaoke is a commercial enterprise.

17 56. Karaoke entertainment is provided as part of, and/or in conjunction with, the  
18 commercial enterprise of those persons and entities named herein who own and/or operate eating  
19 and drinking establishment(s).

20 57. KJs who legitimately acquired all of their music at great cost are being forced by  
21 illicit competition to produce shows for lower and lower fees. Illegitimate competitors offer  
22 libraries of tens of thousands of songs, which would have cost \$50,000 to \$100,000 or more to  
23 acquire legitimately, but produce shows for one-third the rates a legitimate KJ can offer. The  
24 result is significant financial pressure on once-legitimate KJs to skirt or ignore the law and  
25 become pirates, simply to stay in business.

1           58. Slep-Tone has been forced to undertake this litigation in order to ensure that it  
2 survives and continues to produce the high-quality karaoke music its fans demand and to level  
3 the playing field for the legitimate KJs.

4           59. The term “karaoke” means “empty orchestra” in Japanese. Karaoke entertainment  
5 has grown into a multi-million dollar business in the United States.

6           60. Karaoke compact disk plus graphics or MP3 plus graphics recordings contain re-  
7 created arrangements of popular songs for use as “accompaniment tracks.” Typically, the lead  
8 vocal tracks in an accompaniment track are omitted so that a karaoke participant can sing along,  
9 as though he or she were the lead singer. In other situations, the lead vocal track by a sound-alike  
10 artist might be included, and some formats allow the lead vocal to be selectively muted upon  
11 playback so that the accompaniment track may be listened to either with or without the lead  
12 vocals.

13           61. The “graphics” portion of a karaoke recording refers to the encoding of the  
14 recording with data to provide a contemporaneous video display of the lyrics to the song, in  
15 order to aid the performer.

16           62. This graphics data is also utilized to mark the accompaniment tracks with the  
17 Sound Choice trademarks and to cause the Sound Choice trademarks to be displayed upon  
18 playback.

19           63. Entertainers who provide karaoke services in bars, restaurants, and other venues  
20 are known as karaoke jockeys (“KJs”), karaoke hosts, or karaoke operators. The services  
21 provided by KJs typically include providing the karaoke music and equipment for playback,  
22 entertaining the assembled crowd for warm-up purposes, and organizing the karaoke show by  
23 controlling access to the stage, setting the order of performance, and operating the karaoke  
24 equipment.

25       ///

1           64. Typically, a KJ will maintain a catalog of songs available for performance in  
2 order to aid participants in selecting a song to sing.

3           65. Legitimate KJs purchase equipment and purchase or license compact disks  
4 containing accompaniment tracks and charge for the above-mentioned karaoke services.

5           66. Many KJs, such as some of the present Defendants, obtain, copy, share, distribute  
6 and/or sell media-shifted copies of the accompaniment tracks via pre-loaded hard drives, USB  
7 drives, CD-R's, or the Internet.

8           67. Some KJs copy the accompaniment tracks from compact discs to computer hard  
9 drives or other media, an activity known as "media-shifting."

10          68. In many cases, media-shifting also involves converting the compact disc files to a  
11 different format, such as from CD+G format to MP3G format or WAV+G format; this is referred  
12 to as "format-shifting."

13          69. Both media-shifting and format-shifting involve the creation of copies of the  
14 original materials stored on the compact discs.

15          70. Upon information and belief, and based upon investigation of their activities, the  
16 present Defendants are in possession of, and/or have used, authorized, or benefitted from the use  
17 and display of unauthorized media-shifted and format-shifted copies of karaoke accompaniment  
18 tracks which have been marked falsely with SLEP-TONE's federally registered trademarks.

19          71. Neither SLEP-TONE nor any of its associated companies has ever authorized  
20 media-shifting or format-shifting of its accompaniment tracks for any commercial purpose.  
21 SLEP-TONE does, however, tolerate media-shifting and format-shifting under very specific  
22 conditions.

23          72. SLEP-TONE's conditions for tolerance of media-shifting and format-shifting  
24 include, without limitation, that (a) that each media-shifted or format-shifted track must have  
25 originated from an original, authentic Sound Choice compact disc; (b) that the tracks from the

1 original, authentic Sound Choice compact disc be shifted to one, and only one, alternative  
2 medium at a time; (c) that the KJ maintain ownership and possession of the original, authentic  
3 Sound Choice compact disc for the entire time that the media-shifted or format-shifted tracks are  
4 in existence; (d) that the original, authentic Sound Choice compact disc not be used for any  
5 commercial purpose while its content has been shifted to the alternative medium; and (e) that the  
6 KJ notify SLEP-TONE that he or she intends to conduct or has conducted a media-shift or  
7 format-shift, and submits to a verification by a SLEP-TONE representative of adherence to  
8 SLEP-TONE's policy.

9 73. Media-shifting or format-shifting that occurs outside the conditions of tolerance  
10 described above is entirely without authorization or tolerance.

11 74. Each of the Defendants has used media-shifted and/or format-shifted karaoke  
12 accompaniment tracks marked with the SLEP-TONE's registered trademarks for commercial  
13 purposes.

14 75. Without exception, the Defendants' media-shifting activities have been  
15 undertaken outside the conditions of tolerance described above.

16 76. A karaoke accompaniment track that exists outside the conditions of tolerance  
17 described above and that has been marked with SLEP-TONE's federally registered trademarks is  
18 a counterfeit.

19 77. The copying, sharing, distribution, and selling of media-shifted and/or format-  
20 shifted copies is not accompanied by the payment of any royalty to SLEP-TONE, nor authorized  
21 by any license agreement.

22 78. SLEP-TONE and its affiliated companies pay statutory and negotiated royalties to  
23 the owners of copyright in the underlying musical works for their activities in legitimately  
24 creating, copying, distributing, and selling compact disks containing karaoke accompaniment  
25 tracks.

1           79. Those persons, including the Defendants, who illegitimately obtain, copy, share,  
2 distribute, and/or sell media-shifted copies of the Plaintiff's accompaniment tracks do not pay  
3 royalties to the owners of copyright in the underlying musical works.

4           80. SLEP-TONE and its affiliated companies have spent millions of dollars building  
5 and maintaining studios, hiring artists, building a distribution facility, paying royalties to  
6 copyright owners, building a company that is capable of reliably producing high-quality karaoke  
7 versions of current and historical musical hits, and building a brand that is one of the pre-eminent  
8 brands in the industry.

9           81. The widespread creation of counterfeit copies of SLEP-TONE's karaoke disks has  
10 denied SLEP-TONE the benefit of its investments.

11           82. These counterfeits include SLEP-TONE's registered trademarks, such that to the  
12 consumers of the illegitimate KJs' services, the counterfeits are virtually indistinguishable from  
13 genuine Sound Choice materials.

14           83. For each of the several recent releases of new karaoke music by SLEP-TONE,  
15 dozens of illegitimate copies of the contents of the disk have been created, on average, for each  
16 legitimate copy sold. SLEP-TONE, its affiliated companies, and its licensors have lost a  
17 considerable amount of money due to this widespread piracy.

18           84. Such widespread illegal copying of music has been made possible by improving  
19 and ever cheaper computer technology and memory devices and the easy distribution of digital  
20 content over the internet.

21           85. Widespread pirating of songs has contributed to the loss of more than sixty jobs at  
22 the Plaintiff's location in Charlotte, North Carolina, as well as several consecutive years of  
23 operating losses, as revenues do not cover fixed costs.

24 ///

25 ///

1           86. Legitimate KJs spend thousands of dollars acquiring SLEP-TONE's  
2 accompaniment tracks, an irreducible overhead cost that must be recovered over a significant  
3 number of engagements.

4           87. Illegitimate KJs, who acquire the songs in their libraries illegally, have an unfair  
5 advantage over legitimate KJs, because the illegitimate KJs are able to provide karaoke services  
6 with a considerably lower overhead cost and significantly more songs through the pirating of  
7 SLEP-TONE's tracks.

8           88. Piracy therefore unfairly increases the profits of illegitimate KJs and unfairly  
9 decreases the profits of legitimate KJs, a condition that pressures legitimate KJs to either commit  
10 piracy instead of doing business with SLEP-TONE and other karaoke music producers or lose  
11 their shows to KJs offering more songs at cheaper prices to the same venues.

12           89. Because of piracy, it is nearly impossible for legitimate KJs to compete against  
13 illegal KJs, who are able to provide less expensive karaoke services and a greater number of  
14 tracks due to their lower overhead costs.

15           90. Even when illegitimate KJs have been forced through legal action or agreement to  
16 destroy their counterfeit copies of the Plaintiff's tracks, the illegitimate KJs continue to engage in  
17 unfair competition using pirated materials belonging to other manufacturers.

18           91. This unfair competition harms the Plaintiff, despite the elimination of counterfeit  
19 copies of the Plaintiff's tracks, because the continuing piracy of other manufacturers' tracks  
20 exerts continuing pressure upon the Plaintiff's customers and potential customers to commit  
21 piracy of Plaintiff's tracks. Further the greater number of tracks on pirate systems makes it more  
22 difficult for legal hosts to get hired and thus have the revenue to purchase Plaintiff's products.

23           92. In order to build a large library of SLEP-TONE's accompaniment tracks, a  
24 legitimate KJ could expect to spend approximately \$25,000 for each karaoke system upon which  
25



1 that library would be used. For a comprehensive library of SLEP-TONE's accompaniment  
2 tracks, that figure would rise to \$40,000 or more.

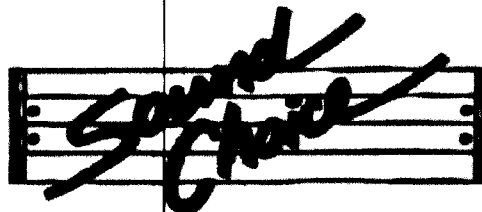
3 93. Venues such as those operated by the Defendants can enjoy significant savings by  
4 turning a blind eye to the actions of the illegitimate KJs they hire.

5 94. These venues benefit from piracy because unfair competition from pirate KJs  
6 pressures legitimate KJs to accept lower compensation from the venues to obtain new business or  
7 retain old business. By decreasing the fixed cost of entertainment, the Defendants' operations  
8 become more profitable.

9 **THE RIGHTS OF THE PLAINTIFF**

10 95. Plaintiff SLEP-TONE is the owner of U.S. Trademark Registration No. 1,923,448  
11 for the trademark SOUND CHOICE.

12 96. Plaintiff SLEP-TONE is also the owner of U.S. Trademark Registration No.  
13 2,000,725, for a display trademark as follows:



18 97. Plaintiff Slep-Tone has, for the entire time its marks ("the Sound Choice Marks")  
19 have been federally registered, provided the public, including the Defendants, with notice of its  
20 federal registrations through the consistent display of the symbol ® with its marks as used.

21 **ACTIVITIES OF DEFENDANTS**

22 98. SLEP-TONE's investigators observed each of the Defendants possessing, using,  
23 or authorizing or benefiting from unauthorized counterfeit copies of at least one work bearing the  
24 Sound Choice Marks.  
25

1           99. Defendants ELLIS ISLAND CASINO & BREWERY and FAME OPERATING  
2 COMPANY, INC. operate a karaoke system to produce a karaoke show at their eating and  
3 drinking establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks  
4 were observed being used. In connection with that show, Defendant ELLIS ISLAND CASINO  
5 & BREWERY and FAME OPERATING COMPANY, INC. repeatedly displayed the Sound  
6 Choice Marks without right or license.

7           100. Defendant ELLIS ISLAND CASINO & BREWERY and FAME OPERATING  
8 COMPANY, INC. has advertised or otherwise indicated that it is in possession of a library  
9 containing more than 100,000 tracks stored on its karaoke system.

10           101. Defendants HOT SHOTS BAR AND GRILL (a/k/a KELLEY'S PUB), THE  
11 PUB, LLC and Defendants JOE and DAN operate a karaoke system to produce a karaoke show  
12 at their eating and drinking establishment in which counterfeit copies of SLEP-TONE's  
13 accompaniment tracks were observed being used. In connection with that show, Defendants  
14 HOT SHOTS BAR AND GRILL (a/k/a KELLEY'S PUB), THE PUB, LLC and Defendants JOE  
15 and DAN repeatedly displayed the Sound Choice Marks without right or license.

16           102. Defendants HOT SHOTS BAR AND GRILL (a/k/a KELLEY'S PUB), THE  
17 PUB, LLC and Defendants JOE and DAN have advertised or otherwise indicated that they are in  
18 possession of a library containing more than 100,000 tracks stored on their karaoke system.

19           103. Defendants BIG NAILS, LLC and BEAUTY BAR operate a karaoke system to  
20 produce a karaoke show at its eating and drinking establishment in which counterfeit copies of  
21 SLEP-TONE's accompaniment tracks were observed being used.

22           104. Upon information and belief, the karaoke system described in the preceding  
23 paragraph is directly owned by Defendants BIG NAILS, LLC and BEAUTY BAR.

24           105. In connection with that show, Defendants BIG NAILS, LLC and BEAUTY BAR  
25 repeatedly displayed the Sound Choice Marks without right or license.

1           106. Defendants BIG NAILS, LLC and BEAUTY BAR have advertised or otherwise  
2 indicated that they are in possession of a library containing more than 50,000 tracks stored on  
3 their karaoke system.

4           107. Defendants CAFÉ MODA, CAFÉ MODA, LLC and WILLIAM CARNEY  
5 operate a karaoke system to produce a karaoke show at their establishment in which counterfeit  
6 copies of SLEP-TONE's accompaniment tracks were observed being used.

7           108. Upon information and belief, the karaoke system described in the preceding  
8 paragraph is directly owned by Defendants CAFÉ MODA, CAFÉ MODA, LLC and WILLIAM  
9 CARNEY.

10           109. In connection with that show, Defendants CAFÉ MODA, CAFÉ MODA, LLC  
11 and WILLIAM CARNEY repeatedly displayed the Sound Choice Marks without right or license.

12           110. Defendants LAS VEGAS DJ SERVICE and JOHNNY VALENTI (a/k/a "Johnny  
13 V"), operate karaoke systems to produce karaoke shows at multiple eating and drinking  
14 establishments in this State in which counterfeit copies of SLEP-TONE's accompaniment tracks  
15 were observed being used.

16           111. In connection with those shows, Defendants LAS VEGAS DJ SERVICE and  
17 JOHNNY VALENTI repeatedly displayed the Sound Choice Marks without right or license.

18           112. Defendants LAS VEGAS DJ SERVICE and JOHNNY VALENTI regularly  
19 perform karaoke shows in multiple eating and drinking establishments simultaneously.

20           113. Defendants LAS VEGAS DJ SERVICE and JOHNNY VALENTI have  
21 advertised or otherwise indicated that they are in possession of a library containing more than  
22 200,000 tracks stored on their karaoke systems.

23           114. Defendant E STRING GRILL & POKER BAR and PCA TRAUTH, LLC operate  
24 a karaoke system to produce a karaoke show at their eating and drinking establishment in which  
25 counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

1           115. In connection with those shows, Defendants E STRING GRILL & POKER BAR  
2 and PCA TRAUTH, LLC repeatedly displayed the Sound Choice Marks without right or license.

3           116. Defendants E STRING GRILL & POKER BAR and PCA TRAUTH, LLC have  
4 advertised or otherwise indicated that they are in possession of a library containing more than  
5 200,000 tracks stored on their karaoke systems.

6           117. Defendants KARAOKE LAS VEGAS and JACK GREENBACK operate a  
7 karaoke system to produce a karaoke show at multiple eating and drinking establishments in this  
8 State in which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being  
9 used.

10           118. In connection with those shows, Defendants KARAOKE LAS VEGAS and JACK  
11 GREENBACK repeatedly displayed the Sound Choice Marks without right or license.

12           119. Upon information and belief, Defendants KARAOKE LAS VEGAS and JACK  
13 GREENBACK perform regular karaoke shows in multiple eating and drinking establishments in  
14 this State using multiple karaoke systems. Defendants KARAOKE LAS VEGAS and JACK  
15 GREENBACK regularly perform karaoke shows in separate eating and drinking establishments  
16 simultaneously.

17           120. Defendants BILL'S GAMBLIN' HALL & SALOON and CORNER  
18 INVESTMENT COMPANY, LLC operate a karaoke system to produce a karaoke show at their  
19 eating and drinking establishment in which counterfeit copies of SLEP-TONE's accompaniment  
20 tracks were observed being used.

21           121. In connection with those shows, Defendants BILL'S GAMBLIN' HALL &  
22 SALOON and CORNER INVESTMENT COMPANY, LLC repeatedly displayed the Sound  
23 Choice Marks without right or license.

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25       ///

1           122. Defendants BILL'S GAMBLIN' HALL & SALOON and CORNER  
2 INVESTMENT COMPANY, LLC have advertised or otherwise indicated that they are in  
3 possession of a library containing more than 200,000 tracks stored on their karaoke systems.

4           123. Defendants IMPERIAL PALACE HOTEL & CASINO and HARRAH'S  
5 IMPERIAL PALACE CORPORATION operate a karaoke system to produce a karaoke show at  
6 their eating and drinking establishment in which counterfeit copies of SLEP-TONE's  
7 accompaniment tracks were observed being used.

8           124. In connection with those shows, Defendants IMPERIAL PALACE HOTEL &  
9 CASINO and HARRAH'S IMPERIAL PALACE CORPORATION repeatedly displayed the  
10 Sound Choice Marks without right or license.

11           125. Defendants IMPERIAL PALACE HOTEL & CASINO and HARRAH'S  
12 IMPERIAL PALACE CORPORATION have advertised or otherwise indicated that they are in  
13 possession of a library containing more than 200,000 tracks stored on their karaoke systems.

14           126. Defendants ROLL 'N' MOBILE DJ'S AND KARAOKE TOO and KENNY  
15 ANGEL were observed operating, through an employee or contractor known as "Sean  
16 McDonald", a karaoke system to produce karaoke shows at multiple eating and drinking  
17 establishments in this State in which counterfeit copies of SLEP-TONE's accompaniment tracks  
18 were being used.

19           127. In connection with those shows, Defendants ROLL 'N' MOBILE DJ'S AND  
20 KARAOKE TOO and KENNY ANGEL repeatedly displayed the Sound Choice Marks without  
21 right or license.

22           128. Defendants ROLL 'N' MOBILE DJ'S AND KARAOKE TOO and KENNY  
23 ANGEL regularly perform karaoke shows in separate eating and drinking establishments  
24 simultaneously.

25       ///

1           129. Upon information and belief, Defendants ROLL 'N' MOBILE DJ'S AND  
2 KARAOKE TOO and KENNY ANGEL are in possession of a library containing more than  
3 36,000 karaoke accompaniment tracks stored on their karaoke system.

4           130. Defendants PT'S PLACE and GOLDEN-PT'S PUB CHEYENNE-NELLIS 5,  
5 LLC operate a karaoke system to produce a karaoke show at their eating and drinking  
6 establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks were  
7 observed being used.

8           131. In connection with those shows, Defendants PT'S PLACE and GOLDEN-PT'S  
9 PUB CHEYENNE-NELLIS 5, LLC repeatedly displayed the Sound Choice Marks without right  
10 or license.

11           132. Defendants PT'S PUB and GOLDEN-PT'S PUB WEST SAHARA 8, LLC  
12 operate a karaoke system to produce a karaoke show at their eating and drinking establishment in  
13 which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

14           133. In connection with those shows, Defendants PT'S PUB and GOLDEN-PT'S  
15 PUB WEST SAHARA 8, LLC repeatedly displayed the Sound Choice Marks without right or  
16 license.

17           134. Defendants PT'S GOLD and GOLDEN-PT'S PUB CENTENNIAL 32, LLC  
18 operate a karaoke system to produce a karaoke show at their eating and drinking establishment in  
19 which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

20           135. In connection with those shows, Defendants PT'S GOLD and GOLDEN-PT'S  
21 PUB CENTENNIAL 32, LLC repeatedly displayed the Sound Choice Marks without right or  
22 license.

23           136. Defendants PT'S PLACE and GOLDEN-PT'S PUB STEWART-NELLIS 2, LLC  
24 operate a karaoke system to produce a karaoke show at their eating and drinking establishment in  
25 which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

1           137. In connection with those shows, Defendants PT'S PLACE and GOLDEN-PT'S  
2 PUB STEWART-NELLIS 2, LLC repeatedly displayed the Sound Choice Marks without right  
3 or license.

4           138. Defendants PT'S PUB and GOLDEN TAVERN GROUP, LLC operate a karaoke  
5 system to produce a karaoke show at their eating and drinking establishment in which counterfeit  
6 copies of SLEP-TONE's accompaniment tracks were observed being used.

7           139. In connection with those shows, Defendants PT'S PUB and GOLDEN TAVERN  
8 GROUP repeatedly displayed the Sound Choice Marks without right or license.

9           140. Defendants STEVE & RAY KARAOKE and STEVE and RAY were observed  
10 operating a karaoke system to produce karaoke shows at multiple venues in this State in which  
11 counterfeit copies of SLEP-TONE's accompaniment tracks were being used.

12           141. In connection with those shows, Defendants STEVE & RAY KARAOKE and  
13 STEVE and RAY repeatedly displayed the Sound Choice Marks without right or license.

14           142. Upon information and belief, Defendants STEVE & RAY KARAOKE and  
15 STEVE and RAY perform regular karaoke shows at multiple eating and drinking establishments  
16 in this State.

17           143. Defendants STEVE & RAY KARAOKE and STEVE and RAY have advertised  
18 or otherwise indicated that they are in possession of a library containing more than 200,000  
19 tracks stored on their karaoke system.

20           144. Defendants LEGENDS CASINO and PUGDAWGS, LLC operate a karaoke  
21 system to produce a karaoke show at their eating and drinking establishment in which counterfeit  
22 copies of SLEP-TONE's accompaniment tracks were observed being used.

23           145. In connection with those shows, Defendants LEGENDS CASINO and  
24 PUGDAWGS, LLC repeatedly displayed the Sound Choice Marks without right or license.

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1           146. Defendants LEGENDS CASINO and PUGDAWGS, LLC have advertised or  
2 otherwise indicated that they are in possession of a library containing more than 200,000 tracks  
3 stored on their karaoke systems.

4           147. Defendants STARMAKER KARAOKE and DEBBIE HARMS were observed  
5 operating a karaoke system to produce multiple karaoke shows at multiple venues in this State in  
6 which counterfeit copies of SLEP-TONE's accompaniment tracks were being used.

7           148. In connection with those shows, Defendants STARMAKER KARAOKE and  
8 DEBBIE HARMS repeatedly displayed the Sound Choice Marks without right or license.

9           149. Upon information and belief, Defendants STARMAKER KARAOKE and  
10 DEBBIE HARMS perform regular karaoke shows in multiple venues in this State using multiple  
11 karaoke systems.

12           150. Defendants STARMAKER KARAOKE and DEBBIE HARMS regularly perform  
13 karaoke shows in separate venues simultaneously.

14           151. Defendants STARMAKER KARAOKE and DEBBIR HARMS have advertised  
15 or otherwise indicated that they are in possession of a library containing more than 200,000  
16 tracks stored on their karaoke systems.

17           152. Defendants DECATUR RESTAURANT & TAVERN and DDRT, LLC operate a  
18 karaoke system to produce a karaoke show at their eating and drinking establishment in which  
19 counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

20           153. In connection with those shows, Defendants DECATUR RESTAURANT &  
21 TAVERN and DDRT, LLC repeatedly displayed the Sound Choice Marks without right or  
22 license.

23           154. Defendants DECATUR RESTAURANT & TAVERN and DDRT, LLC have  
24 advertised or otherwise indicated that they are in possession of a library containing more than  
25 200,000 tracks stored on their karaoke systems.



1           155. Defendants PUTTERS and LISA/CARRISON LTD, LLC operate a karaoke  
2 system to produce a karaoke show at their eating and drinking establishment in which counterfeit  
3 copies of SLEP-TONE's accompaniment tracks were observed being used.

4           156. In connection with those shows, Defendants PUTTERS and LISA/CARRISON  
5 LTD repeatedly displayed the Sound Choice Marks without right or license.

6           157. Defendants PUTTERS and LISA/CARRISON LTD have advertised or otherwise  
7 indicated that they are in possession of a library containing more than 200,000 tracks stored on  
8 their karaoke systems.

9           158. Defendants DJ TARA KING PRODUCTIONS and TARA KING were observed  
10 operating a karaoke system to produce multiple karaoke shows at multiple venues in this State in  
11 which counterfeit copies of SLEP-TONE's accompaniment tracks were being used.

12           159. In connection with those shows, Defendants DJ TARA KING PRODUCTIONS  
13 and TARA KING repeatedly displayed the Sound Choice Marks without right or license.

14           160. Upon information and belief, Defendants DJ TARA KING PRODUCTIONS and  
15 TARA KING perform regular karaoke shows at multiple venues in this State using multiple  
16 karaoke systems.

17           161. Defendants DJ TARA KING PRODUCTIONS and TARA KING regularly  
18 perform karaoke shows at multiple separate eating and drinking establishments simultaneously.

19           162. Defendants DJ TARA KING PRODUCTIONS and TARA KING have advertised  
20 or otherwise indicated that they are in possession of a library containing more than 200,000  
21 tracks stored on their karaoke systems.

22           163. Defendants KIXX BAR, BOULDER STATION CASINO, and NP BOULDER,  
23 LLC operate a karaoke system to produce a karaoke show at their eating and drinking  
24 establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks were  
25 observed being used.

1           164. In connection with those shows, Defendants KIXX BAR, BOULDER STATION  
2 CASINO, and NP BOULDER, LLC repeatedly displayed the Sound Choice Marks without right  
3 or license.

4           165. Defendants KIXX BAR, BOULDER STATION CASINO, and NP BOULDER,  
5 LLC have advertised or otherwise indicated that they are in possession of a library containing  
6 more than 200,000 tracks stored on their karaoke systems.

7           166. Defendants NPPALACE, LLC and PALACE STATION operate a karaoke  
8 system to produce a karaoke show at their eating and drinking establishment in which counterfeit  
9 copies of SLEP-TONE's accompaniment tracks were observed being used.

10           167. In connection with those shows, Defendants NPPALACE, LLC and PALACE  
11 STATION repeatedly displayed the Sound Choice Marks without right or license.

12           168. Defendants NPPALACE, LLC and PALACE STATION have advertised or  
13 otherwise indicated that they are in possession of a library containing more than 200,000 tracks  
14 stored on their karaoke systems.

15           169. Defendants DANSING KARAOKE and KIRK (a/k/a "The Urban Cowboy – DJ"  
16 and "DJ Captain Kirk") were observed operating a karaoke system to produce multiple karaoke  
17 show at multiple eating and drinking establishments in this State in which counterfeit copies of  
18 SLEP-TONE's accompaniment tracks were being used.

19           170. In connection with those shows, Defendants DANSING KARAOKE and KIRK  
20 repeatedly displayed the Sound Choice Marks without right or license.

21           171. Upon information and belief, Defendants DANSING KARAOKE and KIRK  
22 perform regular karaoke shows at multiple venues in this State using multiple karaoke systems.

23           172. Defendants DANSING KARAOKE and KIRK regularly perform karaoke shows  
24 at multiple separate eating and drinking establishments simultaneously.

25       ///

1           173. Defendants DANSING KARAOKE and KIRK have advertised or otherwise  
2 indicated that they are in possession of a library containing more than 200,000 tracks stored on  
3 their karaoke systems.

4           174. Defendants GILLEY'S LAS VEGAS, TREASURE ISLAND, and TREASURE  
5 ISLAND, LLC operate a karaoke system to produce a karaoke show at their eating and drinking  
6 establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks were  
7 observed being used.

8           175. In connection with those shows, Defendants GILLEY'S LAS VEGAS,  
9 TREASURE ISLAND, and TREASURE ISLAND, LLC repeatedly displayed the Sound Choice  
10 Marks without right or license.

11           176. Defendants GILLEY'S LAS VEGAS, TREASURE ISLAND, and TREASURE  
12 ISLAND, LLC have advertised or otherwise indicated that they are in possession of a library  
13 containing more than 200,000 tracks stored on their karaoke systems.

14           177. Defendants HALF SHELL SEAFOOD AND GAMING and HALF SHELL, LLC  
15 operate a karaoke system to produce a karaoke show at their eating and drinking establishment in  
16 which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

17           178. In connection with those shows, Defendants HALF SHELL SEAFOOD AND  
18 GAMING and HALF SHELL, LLC repeatedly displayed the Sound Choice Marks without right  
19 or license.

20           179. Defendants HALF SHELL SEAFOOD AND GAMING and HALF SHELL, LLC  
21 have advertised or otherwise indicated that they are in possession of a library containing more  
22 than 200,000 tracks stored on their karaoke systems.

23           180. Defendants MEGA-MUSIC PRODUCTIONS and JAMES BELLAMY were  
24 observed operating a karaoke system to produce multiple karaoke shows at multiple eating and  
25

1 drinking establishments in this State in which counterfeit copies of SLEP-TONE's  
2 accompaniment tracks were being used.

3 181. In connection with those shows, Defendants MEGA-MUSIC PRODUCTIONS  
4 and JAMES BELLAMY repeatedly displayed the Sound Choice Marks without right or license.

5 182. Defendants MEGA-MUSIC PRODUCTIONS and JAMES BELLAMY have  
6 advertised or otherwise indicated that they are in possession of a library containing more than  
7 135,000 tracks stored on their karaoke system.

8 183. Upon information and belief, Defendants MEGA-MUSIC PRODUCTIONS and  
9 JAMES BELLAMY perform regular karaoke shows at multiple venues in this State.

10 184. Defendants MR. D'S SPORTS BAR and SPORTS BAR, LLC operate a karaoke  
11 system to produce a karaoke show at their eating and drinking establishment in which counterfeit  
12 copies of SLEP-TONE's accompaniment tracks were observed being used.

13 185. In connection with those shows, Defendants MR. D'S SPORTS BAR and  
14 SPORTS BAR, LLC repeatedly displayed the Sound Choice Marks without right or license.

15 186. Defendants MR. D'S SPORTS BAR and SPORTS BAR, LLC have advertised or  
16 otherwise indicated that they are in possession of a library containing more than 135,000 tracks  
17 stored on their karaoke systems.

18 187. Defendants SOUND SELECT and RICK DOMINGUEZ (a/k/a "Rick D"), were  
19 observed operating a karaoke system to produce multiple karaoke shows at multiple eating and  
20 drinking establishments in this State in which counterfeit copies of SLEP-TONE's  
21 accompaniment tracks were being used.

22 188. In connection with those shows, Defendants SOUND SELECT and RICK  
23 DOMINGUEZ repeatedly displayed the Sound Choice Marks without right or license.

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1           189. Defendants SOUND SELECT and RICK DOMINGUEZ have advertised or  
2 otherwise indicated that they are in possession of a library containing more than 200,000 tracks  
3 stored on their karaoke systems.

4           190. Upon information and belief, Defendants SOUND SELECT and RICK  
5 DOMINGUEZ perform regular karaoke shows at multiple eating and drinking establishments in  
6 this State.

7           191. Defendants ISLAND GRILL and OFFICE 7 LOUNGE & RESTAURANT, INC.  
8 operate a karaoke system to produce a karaoke show at their eating and drinking establishment in  
9 which counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

10           192. In connection with those shows, Defendants ISLAND GRILL and OFFICE 7  
11 LOUNGE & RESTAURANT, INC. repeatedly displayed the Sound Choice Marks without right  
12 or license.

13           193. Defendants ISLAND GRILL and OFFICE 7 LOUNGE & RESTAURANT, INC.  
14 have advertised or otherwise indicated that they are in possession of a library containing more  
15 than 200,000 tracks stored on their karaoke systems.

16           194. Defendants JAKE'S BAR and DOC, G. & G., INC. operate a karaoke system to  
17 produce a karaoke show at their eating and drinking establishment in which counterfeit copies of  
18 SLEP-TONE's accompaniment tracks were observed being used.

19           195. In connection with those shows, Defendants JAKE'S BAR and DOC, G. & G.,  
20 INC. repeatedly displayed the Sound Choice Marks without right or license.

21           196. Defendants JAKE'S BAR and DOC, G. & G., INC. have advertised or otherwise  
22 indicated that they are in possession of a library containing more than 200,000 tracks stored on  
23 their karaoke systems.

24           197. Defendants SHOWTYME KARAOKE & DJ, MIKE CORRAL and DAVE  
25 CORRAL (a/k/a "Crazy Dave" and "Mad Mike") were observed operating a karaoke system to

1 produce a karaoke show at a venue in this State in which counterfeit copies of SLEP-TONE's  
2 accompaniment tracks were being used.

3 198. In connection with that show, Defendants SHOWTYME KARAOKE & DJ,  
4 MIKE CORRAL and DAVE CORRAL repeatedly displayed the Sound Choice Marks without  
5 right or license.

6 199. Defendants CALICO JACK'S SALOON and MIKE R. GORDON operate a  
7 karaoke system to produce a karaoke show at their eating and drinking establishment in which  
8 counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

9 200. In connection with those shows, Defendants CALICO JACK'S SALOON and  
10 MIKE R. GORDON repeatedly displayed the Sound Choice Marks without right or license.

11 201. Defendants RED LABEL LOUNGE and RED LABEL BAR, INC. operate a  
12 karaoke system to produce a karaoke show at their eating and drinking establishment in which  
13 counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

14 202. In connection with those shows, Defendants RED LABEL LOUNGE and RED  
15 LABEL BAR, INC. repeatedly displayed the Sound Choice Marks without right or license.

16 203. Defendants TERRY-OKE KARAOKE and TERRY CICCII were observed  
17 operating a karaoke system to produce multiple karaoke shows at multiple eating and drinking  
18 establishments in this State in which counterfeit copies of SLEP-TONE's accompaniment tracks  
19 were being used.

20 204. In connection with those shows, Defendants TERRY-OKE KARAOKE and  
21 TERRY CICCII repeatedly displayed the Sound Choice Marks without right or license.

22 205. Defendants KJ'S BAR & GRILL and L.T. BOND, INC. operate a karaoke system  
23 to produce a karaoke show at their eating and drinking establishment in which counterfeit copies  
24 of SLEP-TONE's accompaniment tracks were observed being used.

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1           206. In connection with those shows, Defendants BAR & GRILL and L.T. BOND,  
2 INC. repeatedly displayed the Sound Choice Marks without right or license.

3           207. Defendants VISION & SOUND ENTERTAINMENT and TIM MILLER (a/k/a  
4 "Diamond Tim") were observed operating a karaoke system to produce a karaoke show at an  
5 eating and drinking establishment in this State in which counterfeit copies of SLEP-TONE's  
6 accompaniment tracks were being used.

7           208. In connection with that show, Defendants VISION & SOUND  
8 ENTERTAINMENT and TIM MILLER repeatedly displayed the Sound Choice Marks without  
9 right or license.

10          209. Defendants VISION & SOUND ENTERTAINMENT and TIM MILLER have  
11 advertised or otherwise indicated that they are in possession of a library containing more than  
12 365,000 tracks stored on their karaoke system.

13          210. Defendants THUNDERBIRD LOUNGE AND BAR, ARUBA HOTEL & SPA,  
14 THUNDERBIRD BAR & LOUNGE, LLC and IRVINGTON PROPERTIES, LLC operate a  
15 karaoke system to produce a karaoke show at their eating and drinking establishment(s) in which  
16 counterfeit copies of SLEP-TONE's accompaniment tracks were observed being used.

17          211. In connection with those shows, Defendants THUNDERBIRD LOUNGE AND  
18 BAR, ARUBA HOTEL & SPA, THUNDERBIRD BAR & LOUNGE, LLC, and IRVINGTON  
19 PROPERTIES, LLC repeatedly displayed the Sound Choice Marks without right or license.

20          212. Defendants THUNDERBIRD LOUNGE AND BAR, ARUBA HOTEL & SPA,  
21 IRVINGTON PROPERTIES, LLC and THUNDERBIRD BAR & LOUNGE, LLC have  
22 advertised or otherwise indicated that they are in possession of a library containing more than  
23 365,000 tracks stored on their karaoke systems.

24          213. Defendants AUDIO THERAPY DJ, AUDIO THERAPY and MATTE  
25 McNULTY were observed operating, through employees or contractors known as "DJ Matte &

1 Jaz", a karaoke system to produce a karaoke show at an eating and drinking establishment in this  
2 State in which counterfeit copies of SLEP-TONE's accompaniment tracks were being used.

3 214. In connection with those shows, Defendants AUDIO THERAPY DJ, AUDIO  
4 THERAPY and MATTE McNULTY repeatedly displayed the Sound Choice Marks without  
5 right or license.

6 215. Upon information and belief, Defendants AUDIO THERAPY DJ, AUDIO  
7 THERAPY and MATTE McNULTY perform regular karaoke shows at multiple eating and  
8 drinking establishments in this State using multiple karaoke systems.

9 216. Defendants AUDIO THERAPY DJ, AUDIO THERAPY and MATTE  
10 McNULTY have advertised or otherwise indicated that they are in possession of a library  
11 containing more than 100,000 tracks stored on their karaoke systems.

12 217. Defendants GOLD SPIKE HOTEL AND CASINO, GOLD SPIKE HOLDINGS,  
13 LLC and GSTI HOLDINGS, LLC operate a karaoke system to produce a karaoke show at their  
14 eating and drinking establishment(s) in which counterfeit copies of SLEP-TONE's  
15 accompaniment tracks were observed being used.

16 218. In connection with those shows, Defendants GOLD SPIKE HOTEL AND  
17 CASINO, GOLD SPIKE HOLDINGS, LLC and GSTI HOLDINGS, LLC repeatedly displayed  
18 the Sound Choice Marks without right or license.

19 219. Defendants GOLD SPIKE HOTEL AND CASINO, GOLD SPIKE HOLDINGS,  
20 LLC and GSTI HOLDINGS, LLC have advertised or otherwise indicated that they are in  
21 possession of a library containing more than 100,000 tracks stored on their karaoke systems.

22 220. Defendants MARDI GRAS LOUNGE-BEST WESTERN and THE NEVADIAN,  
23 INC. operate a karaoke system to produce a karaoke show at their eating and drinking  
24 establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks were  
25 observed being used.



1           221. In connection with those shows, Defendants MARDI GRAS LOUNGE-BEST  
2 WESTERN and THE NEVADIAN, INC. repeatedly displayed the Sound Choice Marks without  
3 right or license.

4           222. Defendants MARDI GRAS LOUNGE-BEST WESTERN and THE NEVADIAN,  
5 INC. have advertised or otherwise indicated that they are in possession of a library containing  
6 more than 100,000 tracks stored on their karaoke systems.

7           223. Defendants BEST WESTERN MARDI GRAS INN and J.P.P.J. OF NEVADA,  
8 INC. operate a karaoke system to produce a karaoke show at their eating and drinking  
9 establishment in which counterfeit copies of SLEP-TONE's accompaniment tracks were  
10 observed being used.

11           224. In connection with those shows, Defendants BEST WESTERN MARDI GRAS  
12 INN and J.P.P.J. OF NEVADA, INC. repeatedly displayed the Sound Choice Marks without  
13 right or license.

14           225. Defendants BEST WESTERN MARDI GRAS INN and J.P.P.J. OF NEVADA,  
15 INC. have advertised or otherwise indicated that they are in possession of a library containing  
16 more than 100,000 tracks stored on their karaoke systems.

17           226. Defendants TJ'S ALL-STAR KARAOKE and JOHN MENNITI were observed  
18 operating a karaoke system to produce a karaoke show at a venue in this State in which  
19 counterfeit copies of SLEP-TONE's accompaniment tracks were being used.

20           227. In connection with that show, Defendants TJ'S ALL-STAR KARAOKE and  
21 JOHN MENNITI repeatedly displayed the Sound Choice Marks without right or license.

22           228. Defendants HARRAH'S LAS VEGAS and CAESAR'S ENTERTAINMENT  
23 CORPORATION operate a karaoke system to produce a karaoke show at their eating and  
24 drinking establishment(s) in which counterfeit copies of SLEP-TONE's accompaniment tracks  
25 were observed being used.

1           229. In connection with those shows, Defendants HARRAH'S LAS VEGAS and  
2 CAESAR'S ENTERTAINMENT CORPORATION repeatedly displayed the Sound Choice  
3 Marks without right or license.

4           230. Each of the Defendants has possessed, used, or authorized or benefited from the  
5 use and display of unauthorized counterfeit goods bearing the Sound Choice Marks, or has  
6 provided, advertised, or authorized or benefited from the provision of services in connection with  
7 the Sound Choice Marks.

8           231. Upon information and belief, each of those karaoke systems has a library  
9 containing a minimum of 8,500 tracks stored thereon, to facilitate their use simultaneously at  
10 separate venues or events.

11           232. Based upon the popularity of SLEP-TONE's music and the size of the  
12 Defendants' respective libraries, which vary between 8,500 and 365,000 songs, operating in  
13 many cases with multiple karaoke systems, the Plaintiff has a good-faith belief that discovery  
14 will show that each of the Defendants (a) is in possession of unauthorized counterfeit goods  
15 bearing the Sound Choice Marks, or (b) knowingly benefits from and/or has the capacity to  
16 control the infringing conduct of others.

17           233. Each of the Defendants is accused of committing acts of infringement, unfair  
18 competition, and deceptive and unfair trade practices in substantially the same way, namely,  
19 through the use of counterfeit karaoke tracks to perform karaoke-related services.

20           234. Though created through unauthorized duplication, the counterfeit karaoke tracks  
21 obtained or made by the Defendants all originated, directly or indirectly in an unbroken  
22 sequence, from the same ultimate source, namely, from compact discs sold by the Plaintiff and  
23 made from master recordings belonging to the Plaintiff.

24           235. As such, the Plaintiff's right to relief, as stated in the paragraphs below, ultimately  
25 arises out of the same series of transactions and occurrences.

1           236. This action raises substantial questions of law and fact common to all of the  
2 defendants hereto.

3  
4                                   **FIRST CLAIM FOR RELIEF**  
5                                   **TRADEMARK INFRINGEMENT**

6           237. Plaintiff SLEP-TONE realleges each and every allegation set forth in the  
7 foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

8           238. Each of the Defendants used, or authorized or directly benefited from the use of, a  
9 reproduction, counterfeit, or copy of the Sound Choice Marks in connection with the provision of  
10 services including karaoke services, by manufacturing or acquiring the reproduction, counterfeit,  
11 or copy of the Sound Choice Marks and by displaying the reproduction, counterfeit, or copy of  
12 the Sound Choice Marks during the provision of those services.

13           239. The Defendants' use of the Sound Choice Marks was "in commerce" within the  
14 meaning of the Trademark Act of 1946 as amended.

15           240. Plaintiff SLEP-TONE did not license any of the Defendants to manufacture or  
16 acquire reproductions, counterfeits, or copies, or to use the Sound Choice Marks in connection  
17 with the provision of their services.

18           241. The Defendants' use of the Sound Choice Marks is likely to cause confusion, or  
19 to cause mistake, or to deceive the Defendants' customers and patrons into believing that the  
20 Defendants' services are being provided with the authorization of the Plaintiff and that the  
21 Defendants music libraries contain bona fide Sound Choice accompaniment tracks.

22           242. The acts of each of the Defendants were willful.

23           243. Unless enjoined by the Court, the Defendants' infringing activities as described  
24 above will continue unabated and will continue to cause harm to the Plaintiff.

25       ///

**SECOND CLAIM FOR RELIEF**  
**UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)**

244. Plaintiff SLEP-TONE realleges each and every allegation set forth in paragraphs 1-236 and 238-243, as though fully set forth herein, and incorporates them herein by reference.

245. On each occasion when they caused a SLEP-TONE accompaniment track to be played during a karaoke show, the Defendants displayed the Sound Choice Marks in connection with the Defendants' karaoke services.

246. The display of the Sound Choice Marks is likely to cause confusion, or to cause mistake, or to deceive those present during the display, in that those present are likely to be deceived into believing, falsely, that SLEP-TONE sponsored or approved the Defendants' services and commercial activities.

247. The display of the Sound Choice Marks is also likely to cause confusion, or to cause mistake, or to deceive those present during the display, in that those present are likely to be deceived into believing, falsely, that the works being performed were sold by SLEP-TONE and purchased by the Defendants.

248. The Defendants' use of the Sound Choice Marks in this fashion would have inured to the benefit of the Plaintiff if the Defendants had legitimately acquired genuine Sound Choice disks instead of counterfeiting them or acquiring counterfeit copies, in that the Plaintiff would have received revenue from such sales.

249. Because SLEP-TONE has been denied this revenue, it has been damaged by the Defendants' uses.

250. Unless enjoined by the Court, the Defendants' unfair competition activities as described above will continue unabated and will continue to cause harm to the Plaintiff.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff SLEP-TONE demands trial by jury and prays for judgment against each of the Defendants severally and that the Court:

- 1 A. Find that each of the Defendants has, directly and/or vicariously through the contractors  
2 they hired, committed acts of trademark infringement, including, but not limited to,  
3 counterfeiting of the federally registered Sound Choice Marks;
- 4 B. Find that each of the Defendants has engaged in unfair competition against Plaintiff  
5 SLEP-TONE in violation of 15 U.S.C. § 1125(a);
- 6 C. Find that each of the Defendants has committed deceptive and unfair trade practices  
7 under Nevada law;
- 8 D. Enter judgment against each of the Defendants and in favor of SLEP-TONE;
- 9 E. Find that Defendants' activities were in all respects conducted willfully and for profit;
- 10 F. Award to SLEP-TONE the Defendants' profits and the damages sustained by SLEP-  
11 TONE because of the Defendants' conduct in infringing the Sound Choice Marks, or, in  
12 the alternative, statutory damages per trademark infringed by counterfeiting in an amount  
13 of \$2,000,000 per trademark infringed, per Defendant;
- 14 G. Award to SLEP-TONE the Defendants' profits and the damages sustained by SLEP-  
15 TONE because of the Defendants' acts of unfair competition under 15 U.S.C. § 1125(a),  
16 plus reasonable attorneys' fees and costs of suit;
- 17 H. Award to SLEP-TONE treble, punitive, or otherwise enhanced damages, as available, for  
18 the Defendants' acts of willful infringement;
- 19 I. Order the seizure of all computer disks, drives, or other media belonging to any of the  
20 Defendants, which media contain illegal counterfeits of registered trademarks;
- 21 J. Grant SLEP-TONE preliminary and permanent injunctive relief against further  
22 infringement of the Sound Choice Marks by the Defendants;

23 ///

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25 ///

1 K. Award SLEP-TONE its costs of suit and attorney's fees, to the extent not awarded above;  
2 and

3 L. Grant SLEP-TONE such other and further relief as justice may require.  
4

5 Dated: February 10, 2012

BORIS & ASSOCIATES

6  
7 By: \_\_\_\_\_/s/\_\_\_\_\_

8 Donna Boris Cal. State Bar # 153033  
9 donna@borislaw.com  
Attorneys for Plaintiff

10  
11 Dated: February 10, 2012

LAW OFFICES OF KERRY FAUGHNAN

12  
13 By: \_\_\_\_\_/s/\_\_\_\_\_

14 Kerry Faughnan Nevada State Bar # 12204  
15 kerry.faughnan@gmail.com  
Attorneys for Plaintiff

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